

# Tribal Title IV-E Reimbursement Program

## Program Guidelines and Reference Manual



*A Spirit of Partnership and Collaboration  
to Support the Well-Being of Alaska's Children*

**State of Alaska  
Office of Children's Services  
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# **Section 1 – History of Partnership and the Indian Child Welfare Act**

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## **Partnership**

The Tribal Title IV-E Partnership was created based upon a vision that rose from the Tribal State Collaboration Group (TSCG) in the late 1990's in an effort to work together to better serve Alaska's Tribal Children. TSCG's commitment to the Indian Child Welfare Act (ICWA) and working with Office of Children's Services (OCS) to ensure the safety and welfare of Alaska's Tribal Children is exhibited through the creation of the Tribal Title IV-E Reimbursement Program. Objectives include increasing opportunities for Alaska Tribes/Tribal Entities to provide services to Tribal citizens and to increase and support Tribal child welfare infrastructures.

The Tribal Title IV-E Partners would like to work on expanding the partnership and are seeking ways to assist the state in providing additional title IV-E related services for Alaska's Tribal Children.

OCS has Title IV-E Agreements with following eleven Alaska Tribes/Tribal Entities.

<b>Tribe/Tribal Entity</b>	<b>Date of Agreement</b>
Cook Inlet Tribal Council, Inc.	05/01/2000
Central Council of the Tlingit & Haida Indian Tribes of Alaska	10/01/2000
Tanana Chiefs Conference	10/01/2000
Association Village Council Presidents	10/01/2001
Maniilaq Association	01/01/2002
Aleutian Pribilof Islands Association, Inc.	04/01/2002
Sitka Tribe of Alaska	04/01/2002
Kawerak, Inc.	07/01/2002
Bristol Bay Native Association	10/01/2002
Nome Eskimo Community (MOU w/Kawerak 2006)	07/01/2011
Orutsaramiut Native Council	04/01/2010

## **Purpose and Intent of the Indian Child Welfare Act**

Congress enacted the Federal Indian Child Welfare Act in 1978 after finding that state and private child welfare agencies were removing Indian Children from their homes at rates that were as much as eight times that for other children. Congress determined that agencies often removed Indian children because they lacked understanding of, and/or respect for, Native cultural differences. Congress further found that once Indian children were removed from their homes, the child welfare agencies and the judicial system systematically refused to include the child's Tribe and extended family in the child welfare decision-making process.

As a result, the ICWA imposes federal rules on state child welfare practices and acknowledges the vital role that the child's cultural heritage and Tribal community must play in child welfare decision making for Indian children.

The purpose and intent of the ICWA is to protect the best interests of Indian children, by preserving Indian families and preventing, whenever possible, the removal of Indian children from their families. The Act concludes that the best interests of Indian children are realized by promoting the stability and security of Indian families and Tribes, and recognizes that this cannot be accomplished without fully including the child's Indian Tribe in all decision-making regarding the future welfare of Tribal children.

Reference Section 9 - Appendices for a copy of the Indian Child Welfare Act.

## Section 2 – Description and Purpose of Title IV-E

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The intent behind the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272), 42 U.S.C. 470-475, and title IV-E of the Social Security Act, is to prevent foster care drift and unnecessary removal of children from their homes. The program is designed to help provide safe and stable out-of-home care for children until the children are either safely returned home, placed permanently with adoptive families or placed in other planned arrangements for permanency.

In cases where removal is necessary to protect the child, title IV-E agencies are required to show that they made efforts to prevent the removal and that efforts are being made to promote the reunification of child and family. If reunification is not in the child's best interest, efforts must be made to promote placement of the child in another permanent placement, priority given to relatives. Other requirements that support the intent of the law include case plans, court hearings, and periodic case reviews. Subsequent legislation added additional requirements that further support the intent of the law and have emphasized that the safety and best interest of children must be the paramount consideration.

Title IV-E is an entitlement grant available to States, Tribes, the District of Columbia and Puerto Rico providing they have an approved title IV-E plan to administer or supervise the administration of the program. The program is governed by Code of Federal Regulations, 45 parts 1355, 1356, and 1357.

Title IV-E is appropriated annually with specific eligibility requirements and fixed allowable uses of funds. The title IV-E agencies are required to submit an annual program expenditure estimate, and quarterly reports of estimated and actual program expenditures.

Title IV-E funds are available for monthly foster care (maintenance) payments for the daily care and supervision of children who are title IV-E eligible; administrative costs to administer and manage the program; training of staff and foster care providers; recruitment and support of foster parents; and costs related to the design, implementation and operation of a state-wide data collection system. In addition to providing funding for foster care, title IV-E also provides adoption and guardian assistance to eligible children. All funding is based on the federal financial participation (FFP) or the federal medical assistance program (FMAP) rates.

Title IV-E funding is an important part of the foster care budget. However, the effort to meet the title IV-E requirements in order to get all children who are title IV-E eligible certified is not desirable only for monetary reasons, but because the requirements constitute good casework and benefit the children and their families.

# Section 3 - Tribal Title IV-E Program Overview

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## Objectives

The following are the Tribal Title IV-E Reimbursement Program objectives:

- To facilitate cooperation between the Office of Children Services and Tribes / Tribal Entities;
- To increase opportunities for Tribes/Tribal Entities to provide services to Tribal citizens;
- To increase and support Tribal Child Welfare infrastructures;
- To provide for the best interests of Alaska Native Children;
- To meet the policy goals of the Indian Child Welfare Act of 1978 (ICWA);
- To assure compliance with the Adoption and Safe Families Act and the Fostering Connections Act; and
- To provide Tribes/Tribal Entities access to federal funding under the Title IV-E administration and training regulations.

## Authority

The Tribal Title IV-E Reimbursement Program is authorized by title IV-E of the Social Security Act (42 U.S.C. 672-679) and is an open-ended entitlement, funded with a combination of federal and Tribal matching funds. The following public laws issued over the last thirty years have amended part E of Title IV of the Social Security Act:

- Adoption Assistance and Child Welfare Act of 1980 (PL 96-272);
- Multiethnic Placement Act of 1994 (PL 103-382);
- Adoption and Safe Families Act of 1997 (PL 105-89);
- Foster Care Independence Act of 1999(PL 106-169);
- Deficit Reduction Act of 2005 (PL 109-171);
- Safe and Timely Interstate Placement of Foster Children Act of 2006 (PL 109-239);
- Adam Walsh Child Protection and Safety Act of 2006 (PL 109-248);
- Child and Family Services Improvement Act of 2006 (PL 109-288);
- Tax Relief and Health Care Act of 2006 (PL 109-432);
- Fostering Connection to Success and Increasing Adoptions Act of 2008 (PL 110-351);
- Patient Protection and Affordable Care Act of 2010 (PL 111-148); and
- Child and Family Services Improvement and Innovation Act of 2011 (PL 112-34).

Part E of Title IV of the Social Security Act and 45 Code of Federal Regulations 1356 title IV-E requirements can be found in Section 9. Title 45 CFR 1355 (General) and 1357 (Title IV-B) can be found at: <http://www.ecfr.gov>.

# **Administration**

The Alaska Tribal Title IV-E Reimbursement Program is administered as follows:

- The governor of Alaska designated the Office of Children's Services as the single state agency to administer the title IV-E foster care and adoption assistance program and to claim and manage all federal title IV-E funds for maintenance, administration and training.
- The federal Administration on Children and Families (ACF) holds OCS responsible for assuring that all federal eligibility requirements are met, federal regulations are followed, federal funds are expended appropriately, and all necessary reports are documented and responded to in a timely fashion.
- The decisions regarding the placement and care of the child (legal custody) must rest with the single state agency or another public agency with which the state agency has an agreement. For purposes of such an agreement, Tribes/Tribal Entities would qualify as "public agencies". Currently the Tribal Title IV-E Reimbursement Program Agreements are not recognized as "federal agreements" because the Tribes/Tribal Entities do not have placement and care authority.

## **Title IV-E Case Plan Requirements**

Following is a list of title IV-E case plan requirements by law and regulation that must be met for each child.

The following are title IV-E case plan requirements.

In-home case plans for each child must:

- a. be a written document which is developed jointly with the parent(s) or guardian of the child at risk of removal from their home and placed in foster care 45 CFR 1356.21; and
- b. include a description of the services offered and provided to prevent removal of the child from the home 45 CFR 1356.21(g); and
- c. clearly state that absent effective preventive services, out of home care is the planned arrangement for the child. (Child Welfare Policy Manual Section 8.1D).

Out-of-home case plans for each child must:

- a. be written document which is a discrete part of the case record, in a format determined by the state/tribe, which is developed jointly with the parent(s) or guardian of the child in foster care 45 CFR 1356.21(g)(1); and
- b. be developed within a reasonable period, to be established by the state/tribe, but in no event later than 60 days from the child's removal from the home 45 CFR 1356.21(g)(2); and
- c. include a plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parent(s) home, facilitate the child's return to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan 42 U.S.C. 675(1)(B); and

- d. include a discussion of how the plan is designed to achieve a placement in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent with the best interests and special needs of the child 45 CFR 1356.21(g)(3); and
- e. include a description of the type of home or institution in which the child is to be placed 42 U.S.C. 675(1)(A); and
- f. include a discussion of the appropriateness of the placement and how the responsible agency plans to carry out the voluntary placement agreement entered into or judicial determination made with respect of the child in accordance with 672(a)(1) of the Act 42 U.S.C. 675(1)(A); and
- g. be designed to achieve placement in the least restrictive (most family-like) setting available and in close proximity to the parents' home consistent with the best interest and special needs of the child 42 U.S.C. 675(5)(A); and
- h. if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which such home is located, the case plan must set forth the reasons why such placement is in the best interests of the child 42 U.S.C. 675(5)(A)(i); and
- i. if the child has been placed in foster care outside the State in which the home of the parents of the child is located, the case plan must require that, periodically, but not less frequently than every 6 months, a caseworker on the staff of the State agency of the State in which the home of the parents of the child is located, of the State in which the child has been placed, or of a private agency under contract with either such state, visit such child in such home or institution and submit a report on such visit to the State agency of the State in which the home of the parents of the child is located 42 U.S.C. 675(5)(A)(ii); and
- j. include, the health and education records of the child, including the most recent information available regarding:
  - 1. the names and addresses of the child's health and educational providers;
  - 2. the child's grade level performance;
  - 3. the child's school record;
  - 4. assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;
  - 5. a record of the child's immunizations;
  - 6. the child's known medical problems;
  - 7. the child's medications; and
  - 8. any other relevant health and education information concerning the child determined to be appropriate by the State agency 42 U.S.C. 675(1)(C); and
- k. include a plan for ensuring the educational stability of the child while in foster care, including assurances that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and
  - 1. an assurance that the State agency has coordinated with appropriate local educational agencies (as defined under section 9101 of the Elementary and Secondary Education Act of 1965) to ensure that the child remains in the school in which the child is enrolled at the time of each placement; or

2. if remaining in such school is not in the best interests of the child, assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school. 42 U.S.C. 675(1)(G) ; and
- I. where appropriate, for a child 16 or over, include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living 42 U.S.C. 675(1)(D); and
- m. in the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, the case plan must document the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. When the case plan goal is adoption, at a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-State and interstate placements 42 U.S.C. 675(1)(E); and
- n. if the state/tribe has determined that there is a compelling reason not to file a petition for termination of parental rights for a child who has been placed out-of-home for 15 out of the last 22 months, the compelling reason must be documented in the case plan, which must be available for court review 42 U.S.C. 675(5)(E)(ii).
- o. in the case of a child with respect to whom the permanency plan is placement with a relative and receipt of kinship guardianship assistance payments under section 673(d), include a description of
  1. the steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted;
  2. the reasons for any separation of siblings during placement;
  3. the reasons why a permanent placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the child's best interests;
  4. the ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment;
  5. the efforts the agency has made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons; and
  6. the efforts made by the State agency to discuss with the child's parent or parents the kinship guardianship assistance arrangement, or the reasons why the efforts were not made. 42 U.S.C. 675(1)(F).
- p. during the 90-day period immediately prior to the date on which the child will attain 18 years of age, whether during that period foster care maintenance payments are being made on the child's behalf or the child is receiving benefits or services under section 677, a caseworker on the staff of the State agency, and, as appropriate, other representatives of the child provide the child with assistance and support in developing a transition plan that:
  1. is personalized at the direction of the child;
  2. includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services;

3. includes information about the importance of designating another individual to make health care treatment decisions on behalf of the child if the child becomes unable to participate in such decisions and the child does not have, or does not want, a relative who would otherwise be authorized under state/tribal law to make such decisions, and provides the child with the option to execute a health care power of attorney, health care proxy, or other similar document recognized under state/tribal law; and
4. is as detailed as the child may elect. 42 U.S.C 675(5)(H).

## Title IV-E Case Review Requirements

Following is a list of title IV-E case review requirements by law and regulation that must be met for each child's case. The case review system assures that:

- a. a review of each child's status is made no less frequently than once every six months either by a court or by an administrative review to:
  1. determine the safety of the child, the continuing need for and appropriateness of the placement;
  2. determine the extent of compliance with the case plan;
  3. determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement; and
  4. project a likely date by which the child may be returned and safely maintained at home or placed for adoption or legal guardianship 42 U.S.C. 675(5)(B); and
- b. if an administrative review is conducted, the following requirements will be met:
  1. the review will be open to the participation of the parents of the child; and
  2. the review will be conducted by a panel of appropriate persons, at least one of whom is not responsible for the case management of, or delivery of services to either the child or the parents who are the subject of the review. 42 U.S.C. 675(6).
- c. the state/tribe holds permanency hearings for all children under the responsibility for placement and care of the title IV-E/IV-B agency, including children for whom the state/tribe claims federal reimbursement for the costs of voluntary foster care maintenance payments. 45 CFR 1356.21(h) & 42 U.S.C. 675(5)(C).
- d. the permanency hearing takes place within 12 months of the date the child is considered to have entered foster care (as defined within the meaning of 675(5)(F) and not less frequently than every 12 months thereafter during the continuation of foster care. 45 CFR 1356.21(h) & 42 U.S.C. 675(5)(C).  
A child will be considered to have entered foster care on the earlier of:
  1. the date of the first judicial finding that the child has been subjected to child abuse or neglect; or
  2. the date that is 60 days after the date on which the child is removed from the home. 45 CFR 1355.20(a) & 42 U.S.C. 675(5)(F).
- e. when a court determines that reasonable efforts to return the child home are not required, a permanency hearing is held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify the child and family are not required. 45 CFR 1356.21(h)(2) & 42 U.S.C. 671(a)(15)(E)(i).

- f. a permanency hearing shall determine:
1. the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, or
    - placed for adoption and the state/tribe will file a petition for termination of parental rights, or
    - referred to legal guardianship, or (in cases where the state/tribal agency has documented to the court a compelling reason for determining that it would not be in the best interest of the child to return home, be referred for termination of parental rights, or
    - be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement;
  2. in the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options;
  3. in the case of a child placed out of the State in which the home of the parent(s) of the child is located, the hearing shall determine whether the out-of-State placement continues to be appropriate and in the best interests of the child;
  4. in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living 45 CFR 1356.21(b)(3); 42 U.S.C. 675(5)(C); & 42 U.S.C. 671(a)(15)(E)(i).
- g. in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, procedural safeguards shall be applied to assure the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child. 45 CFR 1356.21(b)(3); 42 U.S.C. 675(5)(C)(iii); & 42 U.S.C. 671(a)(15)(E)(i).
- h. procedural safeguards are also to be applied with respect to parental rights pertaining to the removal of the child from the home of his/her parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents. 42 U.S.C. 675(5)(C)(ii).
- i. if the state/tribe concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the state/tribe will document to the court the compelling reason for the alternate plan. 45 CFR 1356.21(h)(3).
- j. the state/tribe will file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s) (45 CFR 1356.21(i)(1) & 42 U.S.C. 675(5)(E)):
1. whose child has been in foster care under the responsibility of the state/tribe for 15 of the most recent 22 months. The petition must be filed by the end of the child's 15th month in foster care. In calculating when to file a petition for termination of parental rights, the state/tribe: 45 CFR 1356.21(i)(1)(i)
    - will calculate the 15 out of the most recent 22 month period from the date the child entered foster care as defined at section 675(5)(F) of the Act;
    - will use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period;
    - will not include trial home visits or runaway episodes in calculating 15 months in foster care; and
    - only applies section 675(5)(E) of the Act to a child if the state/tribe does not file a petition because one of the exceptions applies 45 CFR 1356.21(i)(1)(i);

2. whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under State or for a Tribal title IV-E agency, Tribal law). The petition to terminate parental rights is made within 60 days of the judicial determination that the child is an abandoned infant 45 CFR 1356.21(i)(1)(ii); or
  3. who has been convicted of one of the felonies listed above. Under such circumstances, the petition to terminate parental rights is to be made within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required. 45 CFR 1356.21(i)(1)(iii).
- k. the state/tribe may elect not to file or join a petition to terminate the parental rights of a parent of this section if:
1. at the option of the state/tribe, the child is being cared for by a relative;
  2. the state/tribe has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the individual child; or
  3. the state/tribe has not provided to the family, consistent with the time period in the case plan, services that the state/tribe deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required. 45 CFR 1356.21(i)(2).
- l. when the state/tribe files or joins a petition to terminate parental rights, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child. 45 CFR 1356.21(i)(3).
- m. when an administrative body, appointed or approved by the court, conducts the permanency hearing, the procedural safeguards set forth in the definition of permanency hearing will be extended by the administrative body. 45 CFR 1356.21(h)(4).
- n. a child's health and education records are:
1. reviewed and updated, and a copy of the record is supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care; and
  2. supplied to the child at no cost at the time the child leaves foster care if the child is leaving foster care by reason of having attained the age of majority under state/tribe law. 42 U.S.C. 675(5)(D).
- o. the state/tribe must provide the foster parent(s) of a child and any pre-adoptive parent or relative providing care for the child with timely notice of and the opportunity to be heard in any proceedings held with respect to the child during the time the child is in the care of such foster parent, pre-adoptive parent, or relative caregiver. Notice of and opportunity to be heard does not include the right to standing as a party to the case. 45 CFR 1356.21(o) & 42 U.S.C. 675(5)(G).
- p. each child in foster care under the responsibility of the state/tribe who has attained 16 years of age receives without cost a copy of any consumer report of the Fair Credit Reporting Act pertaining to the child each year until the child is discharged from care, and receives assistance (including, when feasible, from any court-appointed advocate for the child) in interpreting and resolving any inaccuracies in the report. 42 U.S.C. 675(5)(I).

## Title IV-E State Plan Requirements

The following list is extrapolated from the title IV-E state/tribe plan requirements. A complete copy of the requirements is included in Section 9.

In order for a state or tribe to be eligible for title IV-E payments, the state/tribe must have an approved IV-E plan that:

- a. provides for foster care maintenance payments in accordance with 42 U.S.C. 672;
- b. provides that the state/tribe will, in the administration of the title IV-E programs, use personnel standards according to 42 U.S.C. 671(a)(5);
- c. provides that the state/tribe will comply with federal reporting requirements addressed in 42 U.S.C. 671(a)(6);
- d. provides that the State agency will monitor and conduct periodic evaluations of activities carried out under the title IV-E program 42 U.S.C. 671(a)(7);
- e. comply with the confidentiality requirements in 42 U.S.C. 671(a)(8);
- f. report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child, as required by 42 U.S.C. 671(a)(9); and
- g. provides for the establishment or designation of an authority which shall be responsible for establishing and maintaining standards for foster family homes and child care institutions 42 U.S.C. 671(a)(10);
- h. provides for periodic review of the standards for foster family homes and child care institutions and amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness institutions 42 U.S.C. 671(a)(11);
- i. provides for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness 42 U.S.C. 671(a)(12);
- j. provides that the state/tribe shall arrange for a periodic and independently conducted audit of the programs assisted under Titles IV-E and IV-B in accordance with 42 U.S.C. 671(a)(13);
- k. provides establishment of specific goals as to the number of children foster care as required by 42 U.S.C. 671(a)(14);
- l. provides that in determining reasonable efforts the child's health and safety shall be the paramount concern.
- m. provides that, except in the circumstances listed below, reasonable efforts shall be made to preserve and reunify families prior to the placement of a child in foster care to prevent or eliminate the need for removing the child from the child's home, and to make it possible for a child to safely return to the child's home.
  - the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);
  - the parent has—
    - committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

- committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
    - aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
    - committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
  - the parental rights of the parent to a sibling have been terminated involuntarily;
- n. if continuation of reasonable efforts for preventing removal or returning the child home is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an interstate placement) and to complete whatever steps are necessary to finalize the permanent placement of the child;
- o. if reasonable efforts preventing removal or returning the child home are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with 42 U.S.C. 671(a)(15)(D), a permanency hearing, which considers in-State and out-of-State permanent placement options for the child, shall be held for the child within 30 days after the determination; and reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-State and out-of-State placements may be made concurrently with reasonable efforts preventing removal or returning the child home;
- p. provides for the development of a case plan for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 42 U.S.C. 675(5)(B) with respect to each such child (NOTE: the case plan and case review requirements are described above);
- q. provides that, where appropriate, all steps will be taken, in accordance with 42 U.S.C. 671(a)(17), to secure an assignment to the tribe of any rights to support on behalf of each child receiving foster care maintenance payments under this part;
- r. provides that the state/tribe does not deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved 42 U.S.C. 671(a)(18);
- s. provides that the state/tribe shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards 42 U.S.C. 671(a)(19);
- t. provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28, United States Code), for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the IV-E plan under this part, including procedures requiring that in any case involving a child on whose behalf such payments are to be made in which a record check reveals a felony conviction for the crimes listed in 42 U.S.C. 671(a)(20)(A) such final approval shall not be granted;

- u. provides that the state/tribe shall check any child abuse and neglect registry for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, as required by 42 U.S.C. 671(a)(20)(B);
- v. provides for health insurance coverage as required by 42 U.S.C. 671(a)(21);
- w. provides that the tribe shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children 42 U.S.C. 671(a)(22);
- x. provides that the state/tribe shall not deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or fail to grant an opportunity for a fair hearing as required by 42 U.S.C. 671(a)(23),
- y. include a certification that, before a child in foster care under the responsibility of the state/tribe is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child and that such preparation will be continued, as necessary, after the placement of the child 42 U.S.C. 671(a)(24);
- z. provide that the state/tribe shall have in effect procedures for the orderly and timely interstate placement of children; and procedures implemented in accordance with an interstate compact, if incorporating with the procedures prescribed below, shall be considered to satisfy the requirement of this paragraph 42 U.S.C. 671(a)(25);
  - aa. provides that the state/tribe meets the requirements in 42 U.S.C. 671(a)(26) in regards to home studies;
  - bb. provides that, with respect to any child in foster care under the responsibility of the state/tribe under this part or part B and without regard to whether foster care maintenance payments are made under section 472 on behalf of the child, the state/tribe has in effect procedures for verifying the citizenship or immigration status of the child 42 U.S.C. 671(a)(27);
  - cc. provides that, within 30 days after the removal of a child from the custody of the parent or parents of the child, the state/tribe shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), in accordance with 42 U.S.C. 671(a)(29);
  - dd. provides assurances that each child who has attained the minimum age for compulsory school attendance under State law and with respect to whom there is eligibility for a payment under the IV-E plan is a full-time elementary or secondary school student or has completed secondary school in accordance with 42 U.S.C. 671(a)(30);
  - ee. provides that reasonable efforts shall be made to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the state/tribe documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and in the case of siblings removed from their home who are not so jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless that tribe documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings 42 U.S.C. 671(a)(31).

Title IV-E eligibility requirements are located in Section 4.

## **Indian Child Welfare Act Requirements**

- The Indian Child's Tribe must be provided with notice of any court hearings.
- Active efforts must be made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.
- Compliance with placement preferences of the ICWA.

ICWA and title IV-E of the Social Security Act are both federal laws. Both laws must be followed. Neither law takes precedence over the other. A complete copy of the Indian Child Welfare Act is included in Section 9.

## **Areas of Reimbursement**

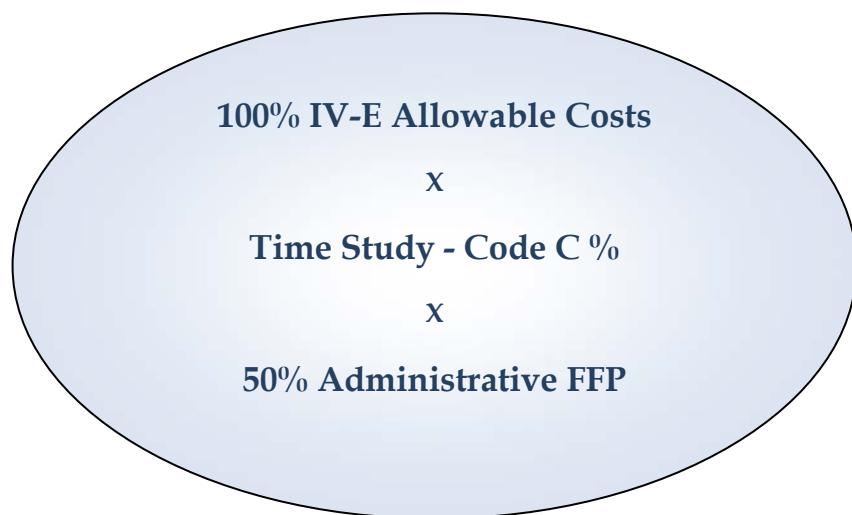
Title IV-E is a federal reimbursement for federally eligible foster care and adoption expenditures that have already been paid. The Tribal Title IV-E Reimbursement Program is currently limited primarily to two areas: Administration and Training. The third category, Maintenance, is in the development phase and will be added in future as a reimbursement category under the Tribal Title IV-E Reimbursement Program.

### **Administration**

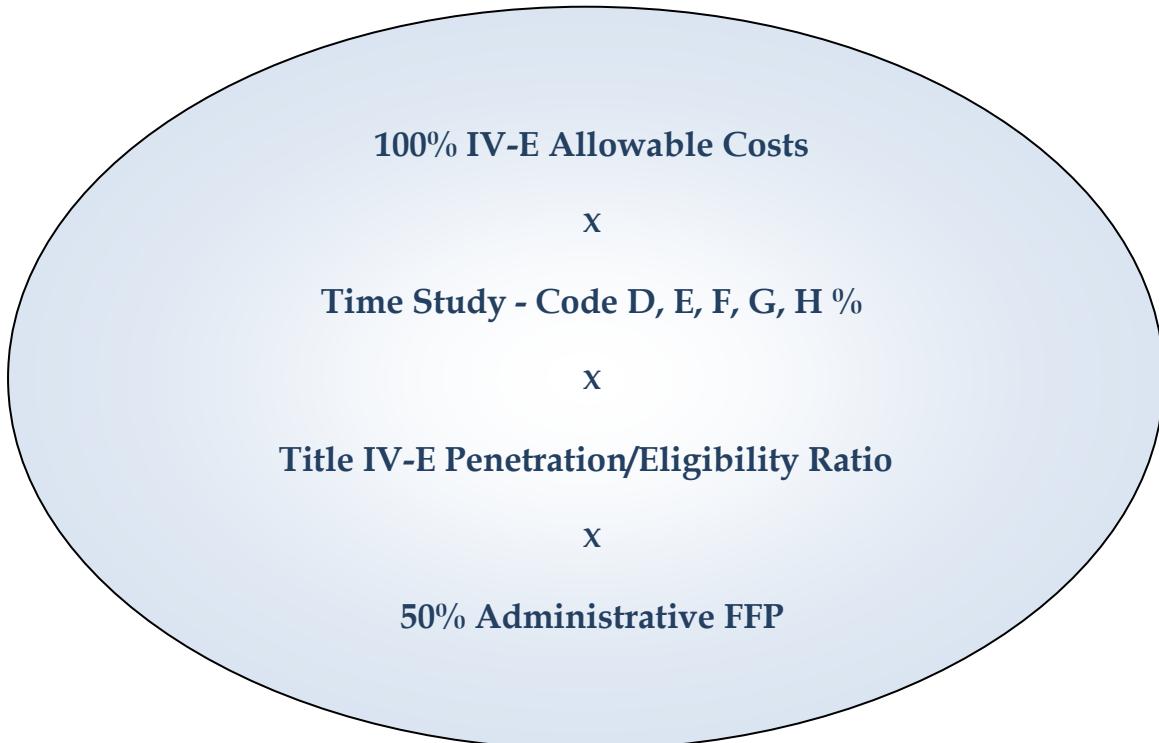
Administration includes personnel costs, travel, purchase of service contracts, and other operating expenditures for properly administering the foster care or adoption program.

The federal government will reimburse a state/tribe administrative costs for serving title IV-E clients at the 50% Federal Financial Participation (FFP) rate. The Tribal Title IV-E Reimbursement Program reimburses Tribes/Tribal Entities using the following federal funding formulas.

The funding formula for Tribal staff who work specifically on title IV-E eligibility determinations is:



The funding formula for Tribal staff that provide administrative allowable activities is as follows:



Examples of reimbursable activities include the following.

- Referral to service
- Determination of title IV-E eligibility
- Preparation for and participation in judicial determinations
- Placement of the child
- Development of the case plan
- Case reviews
- Case management and supervision
- Recruitment and licensing of foster homes and institutions
- Rate setting
- Costs related to data collection and reporting, and
- A proportionate share of related agency overhead (indirect)

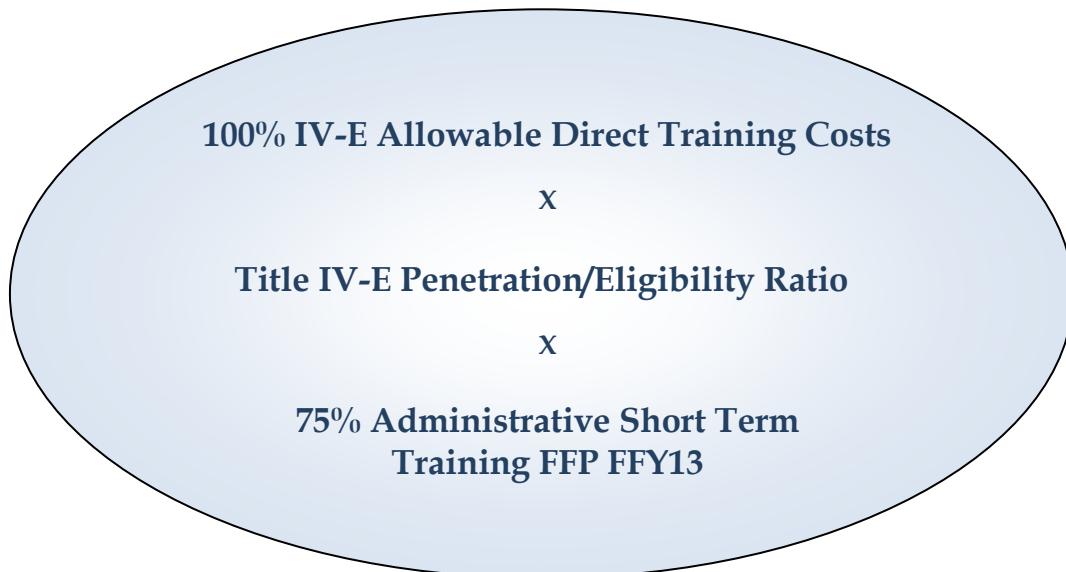
Title IV-E does not reimburse for the proportion of costs incurred for activities that are not included in the above list. For example, title IV-E will not reimburse for investigations of reports of harm or for treatment services. A copy of Part 1356 of Title 45 can be referenced in Section 9.

## **Training**

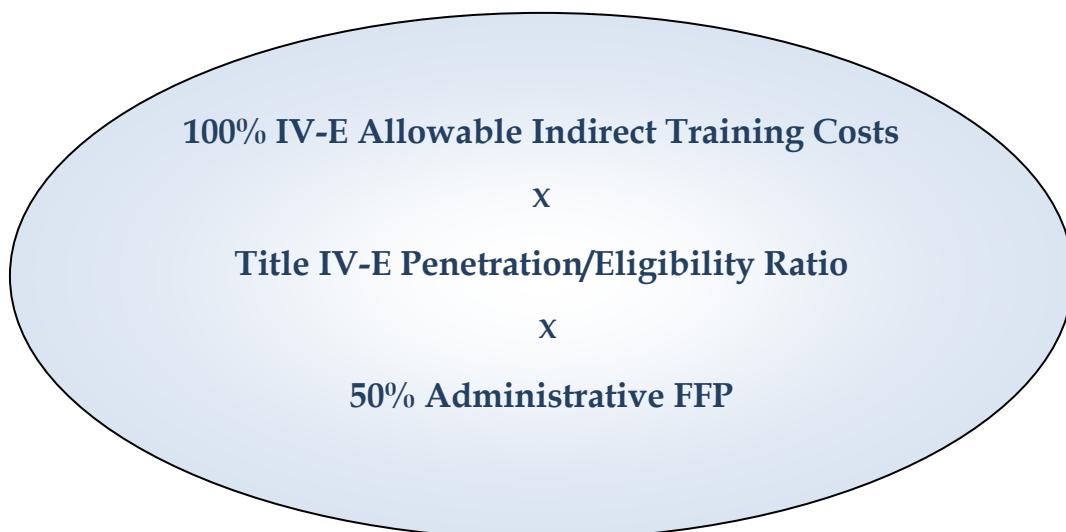
In order to claim the formal “training” costs, Tribes/Tribal Entities must have placement and care authority which will be available to Tribes/Tribal Entities with a Title IV-E Maintenance Agreement. However, short term training claiming is currently available to Tribes/Tribal Entities under the Tribal Title IV-E Reimbursement Program Agreement. Expenditures for FFY2013 and thereafter are reimbursed at 75% FFP. Indirect costs associated with training expenditures are reimbursed at the 50% FFP.

Short term training costs are limited to the expenditures for travel, per diem, accommodations, registration, rental space, and conference fees. Allowable training activities are reimbursed as illustrated in the following funding formulas.

The funding formula for training **direct** expenses is:



The funding formula for training **indirect** expenses is:



According to question 8 of the Child Welfare Policy Manual (rev. 8/12/09), the following training topics may be claimed at the enhanced Federal Financial Participation rate under section 474(3)(A) and (B) of the Social Security Act and 45 CFR 1356.60(b). In general, the training topics must be closely related to one of the examples cited in 45 CFR 1356.60(c)(1) and (2) as allowable administrative activities under the title IV-E program. The regulatory examples of allowable activities include:

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

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

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

There are many training topics that are closely related to these title IV-E allowable activities that the State may train its workers on and claim at the 75 percent rate. For the purposes of this program, the reimbursement rate will be the enhanced short term training rates indicated above. The following are some examples:

- Social work practice, such as family centered practice and social work methods including interviewing and assessment.
- Cultural competency related to children and families.
- Title IV-E policies and procedures.
- Child abuse and neglect issues, such as the impact of child abuse and neglect on a child, and general overviews of the issues involved in child abuse and neglect investigations, if the training is not related to how to conduct an investigation of child abuse and neglect.
- Permanency planning including using kinship care as a resource for children involved with the child welfare system.
- General substance abuse, domestic violence, and mental health issues related to children and families in the child welfare system, if the training is not related to providing treatment or services.
- Effects of separation, grief and loss, child development, and visitation.
- Communication skills required to work with children and families.
- Activities designed to preserve, strengthen, and reunify the family, if the training is not related to providing treatment or services.
- Assessments to determine whether a situation requires a child's removal from the home, if the training is not related directly to conducting a child abuse and neglect investigation. Training on how to conduct specialized assessments such as psychiatric, medical or educational assessments are not permitted.

- Ethics training associated with a title IV-E State plan requirement, such as the confidentiality requirements in section 471(a)(8) of the Act.
- Contract negotiation, monitoring or voucher processing related to the IV-E program.
- Adoption and Foster Care Analysis and Reporting System (AFCARS), Statewide Automated Child Welfare Information System (SACWIS) or other child welfare automated system functionality that is closely related to allowable administrative activities in accordance with 45 CFR 1356.60(d) that the State has chosen to claim as title IV-E training rather than as SACWIS developmental or operational costs (see AT-ACF-OISM-001).
- Independent living and the issues confronting adolescents preparing for independent living consistent with section 477(b)(3)(D) of the Act and the Child Welfare Policy Manual (CWPM), Section 3.1H, Q/A #1.
- Foster care candidate determinations and pre-placement activities directed toward reasonable efforts in 471(a)(15), if the training is not related to providing a service.
- Training on referrals to services, not how to perform the service.

# Section 4 – Eligibility, Application, Review Forms

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## Title IV-E Foster Care

The following describes the requirements for initial and continued eligibility. A flow chart is provided at the end of the section illustrating Alaska's eligibility process for foster care.

### Initial Eligibility

In order for a child to be title IV-E eligible for each placement episode<sup>1</sup> the following initial one-time criteria must be met. If these requirements are not met, the child will not be title IV-E eligible for the entire placement episode.

- The child has been removed from the home of a specified relative who is the child's legal guardian. This can be either a physical removal from the parent or other specified relative, or a "constructive removal".

A "constructive removal" is a non-physical removal and applies to situations where a child is living with a relative or non-relative caretaker but has lived with a parent or another specified relative who is the child's legal guardian within six months prior to the month in which:

a voluntary placement agreement was signed; **or**

court proceedings leading to the removal of the child were initiated and legal custody is removed from the parent/legal guardian; **or**

the parent/legal guardian signs a voluntary placement agreement and the child remains in out-of-home placement. In this situation, if the caretaker is licensed for foster care the child would be IV-E eligible in the caretaker's home if all the other IV-E eligibility requirements are also met; **and**

- At the first court hearing after the removal a judicial determination was made that remaining in the home would be "contrary to the child's welfare" or words to that effect; **and** within 60 days of the removal, a judicial determination was made that reasonable efforts were made to prevent or eliminate the need for removing the child from the child's home; **or**
- If a voluntary placement agreement has been signed and the child remains in foster care over 180 days from the beginning of the placement, then a judicial determination that it is in the best interest of the child to be placed out-of-home must be made; **and**
- The child must be a U.S citizen or a qualified alien as defined by title IV-E statutes; **and**
- The child meets AFDC relatedness criteria, as defined in the Alaska AFDC policy which was in effect 7/16/96 (except that the resource limit is \$10,000 instead of \$1,000 and the definition of deprivation by unemployment has been changed). This requirement is met if the child meets the criteria in the home of the parent or other specified relative from whom the child was removed, in the month in which a voluntary placement agreement was signed or court proceedings leading to the removal of the child were initiated.

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<sup>1</sup> A placement episode starts when a child is removed from home and ends when the child returns home.

Specified Relative is defined per Alaska AFDC Manual, 8/95, as:

- a blood relative within the fifth degree of kinship (this includes parent, sibling, grandparent, great-grandparent, great-great-grandparent, great-great-great-grand-parent, uncle or aunt, great uncle or great aunt, great-great uncle or great-great aunt, nephew or niece, first cousin, and first cousin once removed (= child of first cousin))
- a step parent or step sibling
- adoptive parents and children and other relatives of the adoptive parents (within the fifth degree of kinship)
- spouses of any person named above, even after the marriage is terminated by death or divorce.

In order for a legal guardian to be considered a “specified relative” they must fall under the one of the above definitions. A flow chart illustrating specific relative relations is included at the end of this section.

### **Lived with a Specified Relative**

The child must have lived in the home of the relative from which the child was removed within six months of removal. A home is defined as the family setting where the relative assumes the responsibility for providing day to day care of the child, and it exists as long as the relative exercises responsibility for the care and control of the child even if the child or the relative is temporarily absent from the customary family setting.

### **AFDC Eligibility**

There are two components to AFDC eligibility: 1) the child must be deprived of parental support due to death, absence, incapacity, or unemployment and 2) the household must meet the AFDC income/resource requirements. For the initial eligibility determination, both the deprivation requirement and the income resource requirement must be met in the home of the specified relative from whom the child was removed. The requirement must be met in the month in which court proceedings leading to the removal of the child were initiated or a voluntary placement agreement was signed. The following rules apply:

#### **Deprivation**

- If AFDC eligibility is based on the child's parents' home, then it must be determined whether deprivation of parental support exists due to death, absence, incapacity, or unemployment.
- If AFDC eligibility is based on the home of another specified relative who is the child's legal guardian, then deprivation exists.

#### **Income/Resource Requirement**

- If AFDC eligibility is based on the child's parents' home, then the parents' income and resources must be included when determining whether the income and resource requirements are met.
- If AFDC eligibility is based on the home of another specified relative who is the child's legal guardian, then only the child's income and resources are counted.

## Continued Eligibility

In order for a child to continue to be eligible for IV-E Foster Care after the initial eligibility determination, a judicial determination that state/tribe has made reasonable efforts to finalize the permanency plan must be made within 12 months of the date the child is considered to have entered foster care. The date the child is considered to have entered foster care<sup>2</sup> is the date of the first child abuse or neglect finding or 60 days after the removal; whichever date comes first.

Reasonable efforts findings must be made at least once every 12 months thereafter while the child is in foster care. Reasonable efforts determinations are not required for removals that are based on a voluntary placement agreement.

## Factors Related to Eligibility

### Reimbursability

In order to be eligible for federal reimbursement for foster care maintenance costs, the child must:

- be in the legal custody of state/tribe; and
- placed in a title IV-E claimable placement (fully licensed) and foster care payments are for the child; and
- meet initial and continued eligibility requirements.

### Placement

One of the eligibility criteria for title IV-E is placement in a title IV-E claimable setting. A title IV-E claimable placement is defined as a licensed foster home or a residential care facility. Detention facilities, youth corrections facilities, or psychiatric hospitals are not title IV-E claimable placements.

A licensed foster home is title IV-E claimable for maintenance payments only with no plan of correction and nothing pending if the home is “fully licensed”, i.e. the home has a biennial or provisional license and the results of the criminal background check shows that the foster parents have not committed any of the crimes prohibited in federal law (the Adoption and Safe Families Act).

### Return Home versus Trial Home Visit

Effective October 1, 2001, all placements in the child’s home when state/tribe retains custody are considered trial home visits. During a trial home visit the child remains potentially IV-E eligible and if the child is then placed in out-of-home care again new judicial determinations and a new eligibility determination are not required. A trial home visit cannot exceed six months or a time period ordered by a court. A new eligibility determination must be made:

- if a trial home visit exceeds the time limit; or
- if during the child’s placement at home custody lapses; or
- if custody is changed to supervision; and
- the child is placed in out-of-home care again.

Note: The same time lines and requirements for initial removal apply as described above.

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<sup>2</sup> This is not necessarily the “actual” date of removal; it is the federally defined date that determines when the first reasonable efforts to implement the permanency plan finding must be made.

## **Extension of Title IV-E Foster Care Eligibility to Age 19**

Eligibility for IV-E Foster Care can continue until the child's 18<sup>th</sup> birthday as long as all the IV-E eligibility requirements are met. If the child is still in school and expected to graduate from high school by his/her 19<sup>th</sup> birthday, eligibility can be extended to the child's 19<sup>th</sup> birthday or the date of graduation, whichever comes first.

## **Medicaid Eligibility**

A child who is eligible for title IV-E foster care is also eligible for Title XIX Medicaid in the state in which the child resides. In Alaska, the application form for the two programs is combined.

# **Eligibility Determination Process**

## **Determination of IV-E Eligibility**

OCS Regional Eligibility Technicians are responsible for making determinations regarding eligibility for title IV-E Foster Care and Medicaid for children in custody. The Eligibility Technicians depend on workers to provide the information needed for making determinations and for keeping the title IV-E status of children up to date. They also depend on workers to request that title IV-E language be included in the court orders.

## **IV-E Application and Review Forms**

Workers use the following forms to collect and provide data regarding the child and family. ICWA Caseworkers may be asked to provide assistance in gathering information for the Eligibility staff.

### **1. Application for Medicaid and Title IV-E Foster Care**

Purpose: To collect information about the child's social and financial circumstances needed to determine eligibility for title IV-E and Medicaid.

Completion and Routing: Completed by the worker for all children placed in out-of-home care, and submitted to the Eligibility Technician within 15 days of placement.

### **2. Parent's Self-Declaration of Income and Resources**

Purpose: To collect information about the parent's and child's social and financial circumstances needed to determine eligibility for title IV-E and Medicaid. The financial information provided should reflect the month the petition is filed or the month the voluntary placement agreement was signed.

Completion and Routing: This form is required for children placed in out-of-home care. The form should be completed by the parent, or by the worker based on information provided by the parent. The form is attached to the application form and submitted to the Eligibility Technician within 15 days of placement.

### **3. Medicaid Review**

Purpose: To provide updated information about a child which is needed to determine the child's continued eligibility for Medicaid once eligibility has been established.

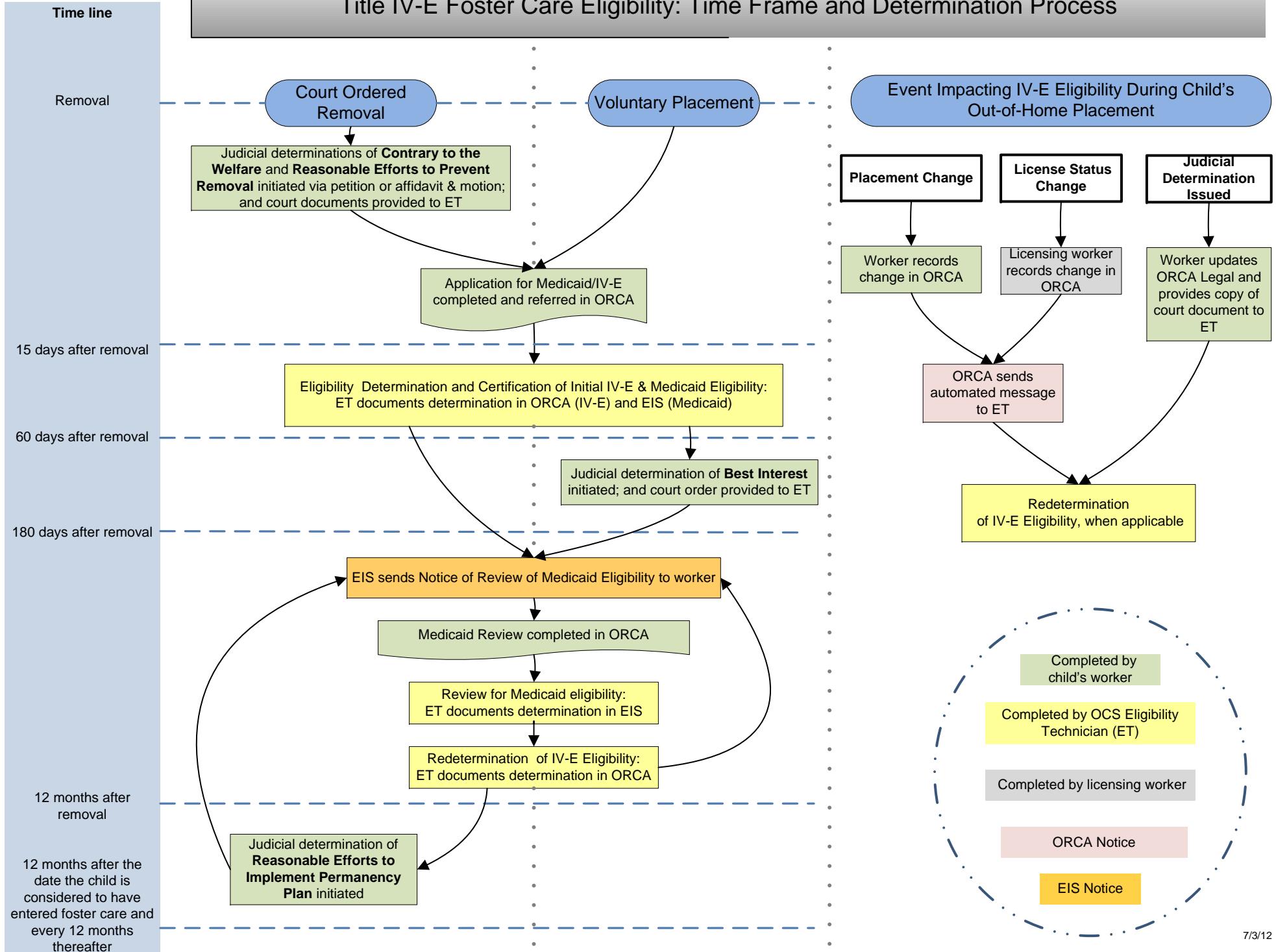
Completion and Routing: The form is completed by the worker at the time of each 6-month Medicaid review, and submitted to the Eligibility Technician. An automated notice is sent through the EIS system to the worker that a review is due (except for ICPC cases, where the Eligibility Technician is responsible for monitoring review dates and notifying the worker when a review is due).

## Eligibility Related Documents

Copies of the following documents are included at the end of this section:

- Eligibility Flow Chart
- Specified Relative Flow Chart
- Application for Medicaid and title IV-E Foster Care
- Parent's Self-Declaration of Income and Resources
- Medicaid Review

## Title IV-E Foster Care Eligibility: Time Frame and Determination Process



# Specified Relative Chart

1<sup>st</sup> Degree

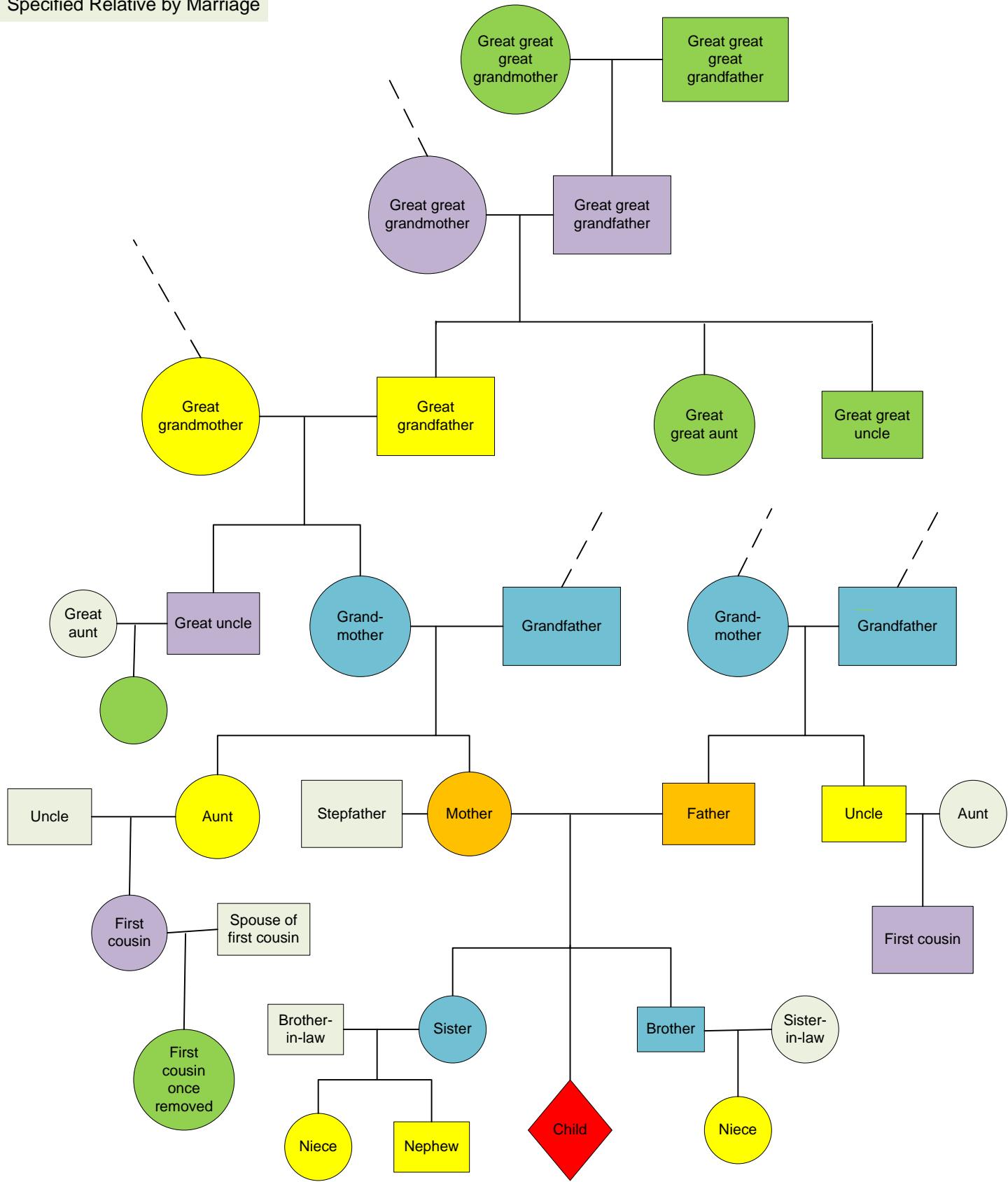
2<sup>nd</sup> Degree

3<sup>rd</sup> Degree

4<sup>th</sup> Degree

5<sup>th</sup> Degree

Specified Relative by Marriage



## APPLICATION FOR MEDICAID AND IV-E FOSTER CARE FOR A CHILD IN DHSS CUSTODY

**DESCRIPTION OF CHILD'S SITUATION:** (Check as many boxes as apply)

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Court Ordered Foster/Residential Care | <input type="checkbox"/> Voluntary Placement        | <input type="checkbox"/> Pregnant                  |
| <input type="checkbox"/> Title IV-E Subsidized Adoption        | <input type="checkbox"/> Institutionalized Under 21 | <input type="checkbox"/> SSI Eligible Child        |
| <input type="checkbox"/> Other _____                           | <input type="checkbox"/> ICPC _____                 | (indicate state initiating ICPC placement request) |

Date Received:

Complete this application for children in DHSS custody and in out-of-home placement. Failure to completely answer each question may delay eligibility determination. If you do not know or understand the question, write "do not know" in the space for the answer.

Attach copies of the child's legal and placement histories from PROBER, and all petitions, motions, court orders, memoranda to the court or other court related documents pertaining to this child's most recent continuous out-of-home placement sequence. Send the packet to the Regional Eligibility Technician. If court actions are initiated by verbal request, please make sure the occurrence is documented and attach a copy of the documentation.

**SECTION I. APPLICANT IDENTIFYING INFORMATION**
**Prober #**
**F1G #**

Last name	First name	Middle name	Sex	DOB	Age	SSN	If no SSN, date applied for <i>(Attach a copy of the application)</i>

Race:  Alaska Native     American Indian     Pacific Islander     Black     White     Asian     Other

Hispanic Origin     Yes     No

U.S. Citizen or National     Alien in Satisfactory Immigration Status; Alien # \_\_\_\_\_     Other \_\_\_\_\_

Name of Placement home/institution \_\_\_\_\_

Child residence address \_\_\_\_\_ Number and Street \_\_\_\_\_ Town \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Benefit mailing address \_\_\_\_\_ Number and Street \_\_\_\_\_ Town \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Notice mailing address \_\_\_\_\_ Number and Street \_\_\_\_\_ Town \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Yes    No

Is this a relative home placement?    If yes, relationship to child \_\_\_\_\_

Does the relative have a current foster care license?

**SECTION II. PREVIOUS ASSISTANCE AND RESIDENCY**

List any other names used by the child (nicknames, aliases, etc.) \_\_\_\_\_

Yes    No

Does OCS intend that the child retain his/her Alaska residency even if the child is placed outside Alaska?

Child has been removed from a subsidized adoptive placement.

If yes, has the adoption been finalized.?     Yes     No    Complete the remainder of the form.

Child is in a IV-E subsidized adoption, and has not been removed from the adoptive home. Application is for Medicaid only?

If yes, attach a copy of the current adoption subsidy agreement and **SKIP AHEAD TO SECTION VI.**

Child Name \_\_\_\_\_

### SECTION III. MEDICAL INFORMATION

Yes No

- Retroactive eligibility is needed to cover unpaid medical expenses. Expenses must have been incurred after custody was taken but before application was completed.  
If yes, specify months needed.
- The applicant has medical expenses as the result of an accident or injury.  
If yes, describe briefly the events surrounding the incident, including the names of other persons involved, insurance companies (if any), and the names of witnesses. Use an additional sheet if more space is required.
- The court order that places this child in state custody specifies who will be responsible for the child's medical expenses.  
If yes, give the name(s) of the person(s) or agency.

List the health insurance or medical services available to the applicant. If the applicant has multiple coverages, list each type of coverage separately.

Policy Holder	Employer	Insurance Co. or Agency Name/Address	Policy Number or Social Security Number

### SECTION IV. LEGAL REQUIREMENT INFORMATION

Yes No

- Is there a judicial determination assigning legal responsibility for the child to the Department of Health & Social Services?
- Is there a signed (properly executed) Voluntary Placement Agreement between the parent(s) and DHSS?
- Is this a minor parent with a child?

### SECTION V. AFDC ELIGIBILITY

Yes No

- Child is  not enrolled in school  enrolled in school full time  enrolled in school part time
- Child is 17 or older and will graduate from high school or vocational/technical program before 19th birthday.
- Child was physically removed from his/her biological or adoptive parents' home.
- Child was physically removed from a relative other than a parent. If yes, specify relationship:

List the living arrangements for the child during the month court action was initiated to physically remove or take custody of the child or a Voluntary Placement Agreement was signed, and during the six months preceding that month. Begin with the date of the child's most recent custodial care prior to out-of-home placement, and include all living arrangements, even those lasting for only one day. If more space is needed, attach a separate sheet.

Begin	End	Custodian Name	Custodian Address	Relationship to Child

Child Name \_\_\_\_\_

If child lived **only** with his or her biological or adoptive parents during the month the court action was initiated or a Voluntary Placement was signed and all of the preceding six months, list all family members who were living in that parent's home, their age and relationship to the child.

Name	DOB	Age	Relationship to Child	SSN (for child's parents only)	Period of Time When Residing in the Home

Yes No

- During the month court Action was initiated or Voluntary Placement Agreement was signed or during any of the preceding six months, one or both parents were incapacitated.  
Please specify who and how long \_\_\_\_\_
- The child and/or child's parents received Temporary Assistance in the month court action was initiated to remove the child or a Voluntary placement agreement was signed, or in any of the six preceding months.

## RESOURCES AND INCOME

Check the situation that applies, and provide the requested information:

During the month that the court action was initiated to remove the child or a Voluntary Placement Agreement was signed and/or during the preceding six months: .

- Child lived **only** with his or her biological or adoptive parent(s) . Income/resource information must be provided **for the child and the child's biological or adoptive parent's household** for those seven months. **Parent's Self-Declaration of Income and Resources (06-9794) must be completed and attached to the application.**
- Child lived with specified relative(s)\* other than the parent(s). The following questions must be answered for **the child only** for those seven months.
- Child did not live with a parent or other specified relative\*. The following questions must be answered for **the child only** for those seven months.

\* *a specified relative is a relative within the fifth degree of kinship; stepfather, stepmother, stepbrother, or stepsister; persons who legally adopt a child or his parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; and spouses of any persons named above, even after the marriage is terminated by death or divorce.*

**Resources:** List all of the child's resources. Resources means any liquid or non-liquid assets such as real property other than the home the family lives in, personal property, such as OCS PFD trust account, other trust accounts, life insurance, mortgage or land contracts, vehicles, boats, bank accounts, credit union accounts, stocks (including Native corporation shares), bonds, or Limited Entry Fishing Permits. If there is a savings account, indicate the funding source. If more space is needed, attach a separate sheet

Type of Asset	Description of Asset	Name(s) of Owner of Asset	Amount in Account/ Value	Month(s) available	If Dividends are received, give amount and how often received

Child Name \_\_\_\_\_

**Income:** List all of the child's income. Income means any money received, such as wages, self-employment, unemployment benefits, Social Security, SSI, welfare benefits, VA income, child support, PFD, cash prizes, Native corporation payments, deposits to a jointly held bank account, or interest earned on bank accounts or investments. Include income of any kind issued for the child's benefit, even if the child or child's representative is not actually receiving the income. If Native corporation payments have been received, provide the name of the Native corporation and indicate both how much was received during the petition month and the preceding six months and how much had already been received during the calendar year. If more space is needed, attach a separate sheet.

Source of Income	How often is it issued?	Month(s) received	Gross Monthly Amount (how much before any deduction is taken out)

## SECTION VI. RIGHTS AND RESPONSIBILITIES

I understand that the Office of Children's Services may not disclose this child's Medicaid eligibility or health care information except as required or permitted by state or federal law. I understand that the Office of Children's Services must release information about this child to other State of Alaska agencies or their agents, if that information is necessary for the administration of the Medicaid program.

I understand that

I must report to the Regional Eligibility Technician **WITHIN 10 DAYS ANY CHANGES** to this child's income, resources, residence, or school status. Also, I understand that I must report any changes in the circumstances of the child's parents for those children covered under the Title IV-E Foster Care Program.

I must provide, or apply for, a Social Security number for this child as Medicaid cannot be provided to any individual who refuses to provide or apply for a number.

If I give false information, withhold information, or intentionally do not report changes promptly, I may be breaking the law and could be prosecuted for unsworn falsification and/or welfare fraud.

## SECTION VII. CERTIFICATION

I have read and understand the information in this application. Under penalty of perjury, or unsworn falsification violation of AS 11.56.210, I certify that the information I gave in this application is true, correct, and complete to the best of my knowledge.

OCS Representative Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

Location \_\_\_\_\_

Phone \_\_\_\_\_

## PARENT'S SELF-DECLARATION OF INCOME AND RESOURCES

Parent Name: \_\_\_\_\_

Month Petition Filed or Voluntary Placement Agreement Signed: \_\_\_\_\_

Parent Address: \_\_\_\_\_

We are in the process of determining medical benefits for your child(ren) while in foster care. The information listed below is needed in order for us to ensure your child receives all available benefits. Please complete the following income and assets information and return to your caseworker. The information is needed for parents and step-parents who lived in the home and for the child(ren) who are placed out-of-home, and should be for the month that OCS petitioned for custody (listed above) of the child(ren) or a Voluntary Placement Agreement was signed, and for the six months preceding that month.

**Who lived with you in [redacted] and/or the preceding six months?**

Name	Date of Birth	Relationship to you	Period of Time When Residing in the Home

**Have your child(ren) lived with any other relatives in the last seven months?**

Child	Name of Relative	Relationship to child	Period during which child lived with the relative

**Parents who live in the home**

Name: \_\_\_\_\_

mother    father    stepmother    stepfather to \_\_\_\_\_

(name of child(ren))

Social Security Number: \_\_\_\_\_

Name: \_\_\_\_\_

mother    father    stepmother    stepfather to \_\_\_\_\_

(name of child(ren))

Social Security Number: \_\_\_\_\_

**EMPLOYMENT.** Complete for the month the petition was filed or the Voluntary Placement Agreement was signed (listed at top of page one), **for each parent in the home who was employed** during that month.

Name	Employer Name	Period Employed	Hours per Month	Monthly Salary

**Did anyone in your household get benefits in that month?**

	Yes	No	If yes, who received? _____	Amount \$ _____
Unemployment Insurance Benefits	Yes	No	If yes, who received? _____	\$ _____
Social Security Benefits	Yes	No	If yes, who received? _____	\$ _____
Supplemental Security Income	Yes	No	If yes, who received? _____	\$ _____
Veteran's Benefits	Yes	No	If yes, who received? _____	\$ _____
Temporary Assistance	Yes	No	If yes, who received? _____	\$ _____
Tribal Family Assistance	Yes	No	If yes, who received? _____	\$ _____
BIA General Assistance	Yes	No	If yes, who received? _____	\$ _____
Child Support	Yes	No	If yes, who received? _____	\$ _____
Workmen's Compensation	Yes	No	If yes, who received? _____	\$ _____
Retirement or Pension Benefits	Yes	No	If yes, who received? _____	\$ _____
Permanent Fund Dividend	Yes	No	If yes, who received? _____	\$ _____
Dividends and Interest	Yes	No	If yes, who received? _____	\$ _____
Royalties	Yes	No	If yes, who received? _____	\$ _____
Contest or Lottery Prizes and Bingo Winnings	Yes	No	If yes, who received? _____	\$ _____
Native corporation payments	Yes	No	If yes, who received? _____ Name of corporation: _____ How many shares? _____	\$ _____
Other	Yes	No	Specify: _____	\$ _____

**Did anyone in your household have the following resources in that month?**

Money on hand (cash or checks)	Yes	No	If yes, amount \$ _____	Owner: _____
Checking or savings account	Yes	No	If yes, amount \$ _____	Account holder/Name: _____
Trust account (include burial trust account)	Yes	No	If yes, amount \$ _____	Account holder/Name: _____
Stocks, bonds	Yes	No	If yes, value \$ _____	Owner: _____
Mortgage or land contracts	Yes	No	If yes, value \$ _____	Owner: _____
Life insurance (excluding term insurance)	Yes	No	If yes, value \$ _____	Owner: _____
Vehicles	Yes	No	If yes, Year: _____	Make: _____ Model: _____ How much is owed?: \$ _____ Lien holder: _____
Boats/Motors	Yes	No	If yes, Year: _____	Make: _____ Model: _____ How much is owed?: \$ _____ Lien holder: _____
Other. Specify: (for example limited entry permits)	Yes	No	If yes, value \$ _____	Owner: _____

If self-employed, please identify if any of the above resources are used in your employment: \_\_\_\_\_

## **Health Insurance Coverage**

Do the children in out-of-home care have health insurance coverage?      Yes    No

If yes, list the health insurance or medical services currently available to the child. If the child has multiple coverages, list each type of coverage separately.  
(CHAMPUS, Public Health Service (PHS), Private Insurance, etc.)

Policy Holder Name	Employer	Insurance Co. or Agency Name/Address	Group Number (if any)	Policy Number or Social Security Number

Do any of the children in out-of-home care have any **unpaid** medical or dental services from the last three months?      Yes    No

If yes, who? \_\_\_\_\_ What months? \_\_\_\_\_

Do any of the children in out-of-home care have medical problems or medical costs due to an accident?      Yes    No

If yes, who? \_\_\_\_\_ Please describe the events surrounding the accident, including the names of other persons involved, insurance companies (if any), and the names of witnesses.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**MEDICAID REVIEW****DESCRIPTION OF CHILD'S SITUATION:** (Check all that apply)

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Court Ordered Fost/Res. Care   | <input type="checkbox"/> Voluntary Placement        | <input type="checkbox"/> Pregnant           |
| <input type="checkbox"/> Title IV-E Subsidized Adoption | <input type="checkbox"/> Institutionalized under 21 | <input type="checkbox"/> SSI Eligible Child |
| <input type="checkbox"/> Other                          | <input type="checkbox"/> ICPC _____                 | (state that initiated request)              |

Date Rec'd: \_\_\_\_\_  
 EIS #: \_\_\_\_\_  
 Case ID: \_\_\_\_\_

Last name	First name	Middle name	Gender	DOB	Age

SSN	Benefit Mailing Address

Health Insurance Policy Holder	Health Insurance Company or Agency Name/Address	Policy #

**CHILD ASSETS AND INCOME**

Asset Type	Start Date	End Date	Value	Amount Owed	Earnings	Per

Yes No

- The Child Assets and Income Information listed above is current to the best of my knowledge.
- During the next 6 months, changes to the child's income and/or resources are expected. If yes, explain: \_\_\_\_\_
- During the past 6 months, the child has medical expenses as a result of an accident or injury. If yes, briefly describe the events surrounding the incident, including the names of other persons involved, insurance companies (if any), and the names of witnesses.
- During the next 6 months, changes that might affect Medicaid Eligibility are expected (i.e., adoption, graduation from high school, return home,)?  
Specify: \_\_\_\_\_

Comments: \_\_\_\_\_

I certify that the information in this application is true, correct, and complete to the best of my knowledge, under penalty of perjury, or unsworn falsification violation of AS 11.56.210.

Office of Children's Services

---

Printed Name

---

Date

---

Location

---

Phone

## Section 5 – Quarterly Activity Reports

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Quarterly activity reports are submitted to the Office of Children's Services on a quarterly basis. Reports are due the **25<sup>th</sup>** day of the month following the end of the quarter. It is **critical** that the quarterly activity reports include the children that the Tribe/Tribal Entity provides a service<sup>1</sup> to during that quarter. The reports should only include children served by individuals included in the Tribe/Tribal Entity's Title IV-E cost pool. Children served by employees not in the cost pool should not be included in the reports.

On a quarterly basis, OCS will calculate a combined tribal statewide penetration/eligibility rate based upon the children who received services and for whom a foster care payment was made; reference Section 6 - Tribal Universe. Therefore, accuracy of each report is extremely important, not only for the penetration/eligibility rate calculation, but for future audit purposes as well.

The following illustrates which children should be included on the quarterly activity reports.

WHO SHOULD BE INCLUDED IN THE QUARTERLY ACTIVITY REPORTS	WHO SHOULD NOT BE INCLUDED IN THE QUARTERLY ACTIVITY REPORTS
Children placed in OCS licensed foster homes.	Children in the custody of another state and not in OCS custody. Tribes may elect to submit these names for tracking and review purposes. Use Code G on Time Study for out of home case management & administration.
Children in OCS custody and placed in another state.	Children in a Residential Psychiatric Treatment Center, hospital, or DJJ facility (Tribal or OCS custody). Tribes may elect to submit these names for tracking and review purposes. Use Code L on Time Study until discharge; then use appropriate code according to time study section.
Children in OCS custody placed in relative or non-relative foster homes whose licensure is pending (e.g. waiting for finger print check, criminal background report, etc.). <sup>2</sup>	
Children certified by OCS as a Candidate for Foster Care. Use Code F on Time Study. Verification of candidacy <u>must</u> be on file. See Time Study Section Code F for information related to candidate requirements.	
Tribal children in potential custody of a Tribe who are candidates for out of home placement/foster care. Names, initials and/or case numbers are acceptable for future audits. Use Code L on Time Study.	

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<sup>1</sup> Examples of Allowable Administrative Services are defined in Section 9, 45 CFR 1356.60. If the service does not fall with the allowable activities, use Code L on your time study.

<sup>2</sup> Licensure is Pending: Foster Homes that either hold an emergency license or a provisional pending license and are in the process of fulfilling all licensing requirements.

WHO SHOULD BE INCLUDED IN THE QUARTERLY ACTIVITY REPORTS (CONT'D)	WHO SHOULD NOT BE INCLUDED IN THE QUARTERLY ACTIVITY REPORTS (CONT'D)
Children in either an unpaid or paid placement by others ((i.e. TANF, Tribes).	
Children in custody of an Alaskan Tribe who are in a Tribally licensed foster home. Use Code L on Time Study.	
Children in OCS custody that are being transferred from foster care to home. This is categorized as a "trial home visit" up to 6 months. Use Code G on Time Study. Use Code L after 6 months, unless court order is on file indicating that trial home visit can be longer.	

Following are instructions for the quarterly activity report and a sample of the quarterly activity report form. The quarterly activity report is an appendix to the Provider Agreement and will be provided to the Tribe/Tribal Entity upon execution of a Provider Agreement. If additional templates of the quarterly activity report are needed, please contact the Tribal Title IV-E Program Coordinator.

## Instruction Sheet for Quarterly Activity Reports

1. Column A, B, C: Enter child's last name, first name and date of birth. Please verify birth dates. It is extremely important that the spelling of the child's name and birth date is correct.
2. Column D through F: Enter an "X" in the column of the month that Tribal Staff provided services to the child during the month. Do not "X" this column if a service wasn't provided. Delete children who did not receive a service during the quarter.
3. Column G and H: Enter an "X" to illustrate where the child is placed regardless if the child is OCS custody or the custody of another state.
4. Column I through L: Enter an "X" in the appropriate column illustrating the status of the child. Do not enter an "X" in any column if the child is the custody of another state. That will be determined based on the entry in column H. If a child is undergoing an initial assessment during the first month and then is removed in a later month, enter an "X" in both column L and I. OCS Foster Care (column I) includes relative care. If child is on a trial home visit – add a note after column L.

### Quarterly Activity Report Column Headings:

Client Information			Children Receiving Services			Location Status		Child Status			
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J	Column K	Column L
Last	First	DOB	Received Services for First Month of Quarter	Received Services for Second Month of Quarter	Received Services for Third Month of Quarter	In-State	Out-of-State	OCS Foster Care	OCS Candidate for Foster Care	Tribal Foster Care	Initial Assessment

## **Tribal Title IV-E Quarterly Activity Report - Appendix F**

## Section 6 – Tribal Universe

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The Tribal Title IV-E Reimbursement Program's penetration/eligibility rate is calculated by combining each Tribe/Tribal Entity's individual penetration/eligibility rate into a "Tribal Universe". This method was selected based on a collective agreement with the Tribal Title IV-E partners in 2005 and approved by Federal Region X. The quarterly tribal penetration/eligibility rate is used to determine the quarterly reimbursement and federal claim.

The following table illustrates who is included in quarterly calculations.

WHO IS INCLUDED IN TRIBAL PENETRATION/ELIGIBILITY RATE CALCULATION	WHO IS NOT INCLUDED IN TRIBAL PENETRATION/ELIGIBILITY RATE CALCULATION
Children placed in OCS licensed foster homes and paid for by Alaska OCS.	Children in the custody of another state and not in OCS custody. Use Code G on Time Study for out of home case management and administration.
Children in OCS custody and placed in another state and paid for by Alaska OCS.	Children in a Residential Psychiatric Treatment Center, hospital, or DJJ facility (Tribal or OCS custody).
Children in OCS custody placed in relative or non-relative foster homes whose licensure is pending (e.g. waiting for fingerprint check, criminal background report, etc.). <sup>3</sup>	Children certified by OCS as a Candidate for Foster Care.
	Tribal children in Tribal custody who are candidates for out of home placement/foster care.
	Children in OCS custody that are being transferred from foster care to home.
	Children in custody of an Alaskan Tribe who are in a Tribally licensed foster home.
	Children in out of home placement and either unpaid or paid for by others (i.e. TANF, Tribes).

Following is an example of a worksheet used in determining the quarterly penetration/eligibility rates.

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<sup>3</sup> Licensure is Pending: Foster Homes that either hold an emergency license or a provisional pending license and are in the process of fulfilling all licensing requirements.

**Tribal IV-E**  
**Penetration/Eligibility Rate Worksheet**

**Sample Quarterly Calculation Sheet for Clients Served by Tribe/Tribal Entity**

Time Period:	Quarterly					
<b>Client Information</b>						
Last	First	DOB	1st Month of Quarter Services Provided	2nd Month of Quarter Services Provided	3rd Month of Quarter Services Provided	Quarterly Eligibility Status
<i>Children's Identifying Information</i>			X	X	X	P\$
				X	X	P\$
				X	X	
				X	X	S\$
			X		X	
			X		X	Z\$
			X	X	X	P\$
			X	X	X	
			X		X	P\$
			X		X	P\$
			X		X	A\$
			X		X	AA\$
			X		X	Z\$
			X		X	W\$
			X	X	X	P\$
			X	X	X	Z\$
			X	X	X	W\$
			<b>14</b>	<b>9</b>	<b>17</b>	
P = Eligible and Reimbursable / S = Eligible and Not Reimbursable						7
A & AA & W = Temporarily Ineligible						4
Z = Denied						3
Total Clients						14
Penetration/Eligibility Rate						50.0000%

Eligibility Codes		
IV-E Clients	P	Eligible and Reimbursable
	S	Eligible, not Reimbursable
Ineligible (Temporary)	A & AA	A = Annual Reasonable Efforts/Custody AA = Not Fully Licensed Home
	W	Eligibility Determination Pending (Effective upon the State's Cost Allocation Modification Approval)
Ineligible	Z	Denied

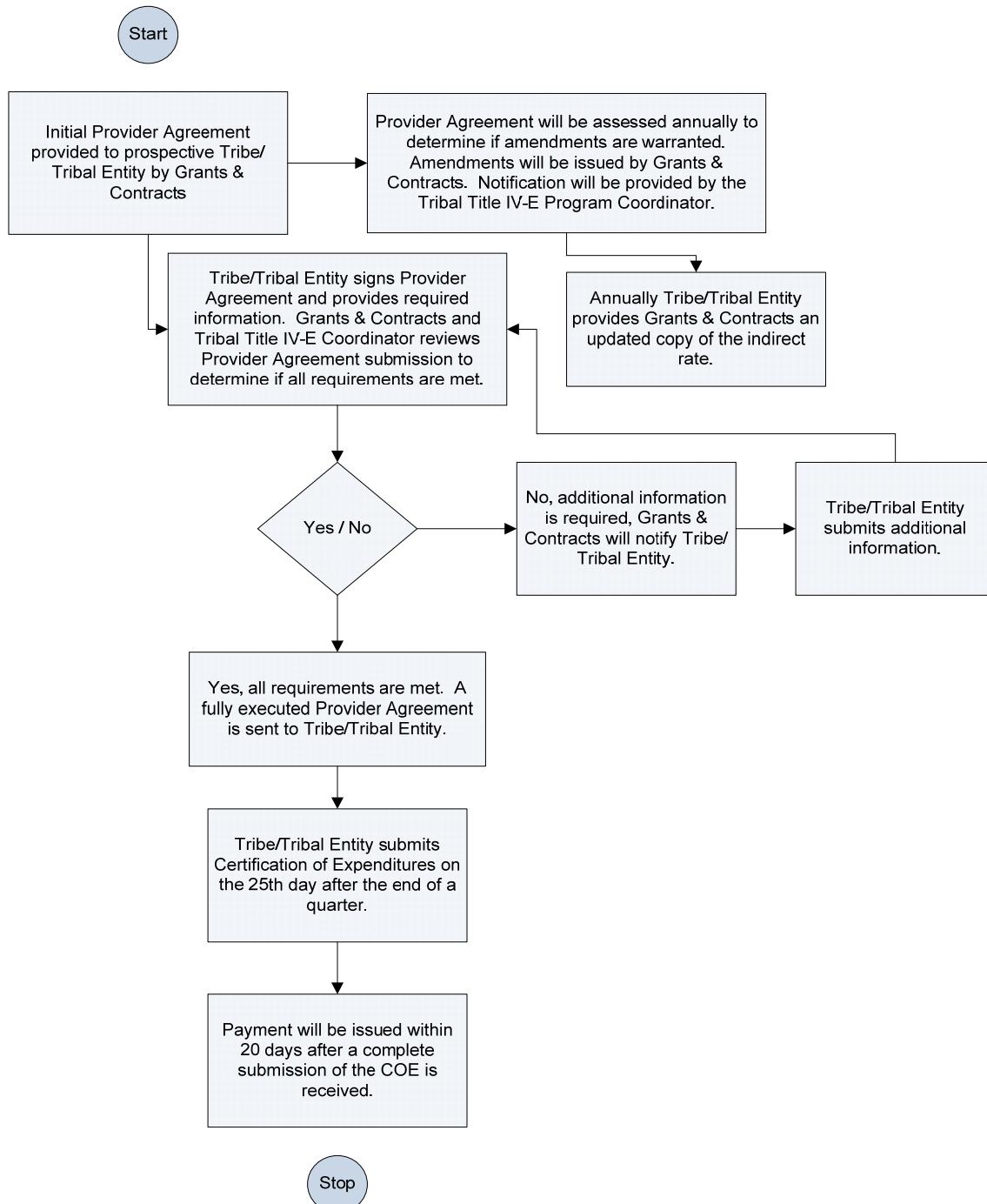
Note: The children who do not have a code are not in state paid foster care.

# Section 7 – Provider Agreements / Fiscal

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## Provider Agreements

The following illustrates the contractual process for the Tribal Title IV-E Reimbursement Program. The State of Alaska utilizes a Provider Agreement as the mechanism to pass federal funding through to the Tribes/Tribal Entities.



## Cost Pools

All expenditures for administering the Tribe/Tribal Entity's Child Welfare Program must be captured separately in each Tribe/Tribal Entity's accounting structure. All expenditures claimed must be "matchable" as described on page seven of this section. The term used to describe the group of expenditures claimed to title IV-E is called a "cost pool". Allowable management percentages are based on the Office of Management and Budget Circular A-87. In February 2005, Federal Region X directed OCS to use the following methods to allocate Tribal Title IV-E expenditures:

### Direct Service

Any Tribal staff that provides direct child welfare services must participate in a four week time study on a quarterly basis to appropriately allocate their time to title IV-E reimbursable activities and non-Title IV-E reimbursable activities according to 45 CFR 1356.60(b) and (c).

### Management

In addition to the expenditures of direct service staff, the Tribe/Tribal Entity may allocate a percentage of the Department's Supervisor/Manager and their administrative staff's expenditures to the Tribal Title IV-E cost pool. For example, if there are 13.75 full-time equivalent (FTE) staff in two programs supervised by the Department Director, there may be two levels of management allocations that would need to be calculated.

First, determine the overall number of FTEs supervised by the Director and then calculate the allowable percentage based upon the number of FTEs that are IV-E and non-IV-E. Second, the Social Services Program Manager's (supervised by the Director) percentage would need to be calculated based on the number of FTEs that they supervise. The organizational chart provided at the end of this section illustrates the two tiered allocation method. The only way management can allocate 100% of their expenditures in the cost pool is if they participate in the time study or supervise employees that are 100% IV-E allocated.

All direct service and management staff as well as other applicable cost pool #1 expenditures will be applied to time study results, combined statewide tribal penetration/eligibility rate, and the 50% Federal Financial Participation (FFP).

Each time a Tribe/Tribal Entity reorganizes their program(s) and/or staff that is included in the cost pool, an updated organizational chart **must** be submitted to the Tribal Title IV-E Program Coordinator. The Tribal IV-E Coordinator and Tribal Representative will meet to review and discuss options for maximizing federal reimbursement. Upon finalization of the organizational chart, the Tribe/Tribal Entity will submit a formal cost pool modification with a cover letter or memo stating the effective date of the modification with the organizational chart.

## Certification of Expenditures

The Title Tribal IV-E Reimbursement Program operates on the state fiscal year (July 1<sup>st</sup> through June 30<sup>th</sup>). The Certification of Expenditures (COE) is due the 25<sup>th</sup> day of the month following the end of the quarter. A copy of the COE with the travel/training details is provided at the end of this section.

The following provides guidance for preparation of the COE:

## **General**

- Submit an electronic version of the COE, travel/training detail forms and training agendas for cost pool #2 to the Tribal Title IV-E Program Coordinator. Please note, in addition a signed COE must also be sent in pdf form for faxed to Grants and Contracts and the Tribal Title IV-E Program Coordinator.
- Documentation for line items (other than travel and training related expenditures in cost pool #2) is not required to be submitted with the COE; however, must be available for future reference and audit purposes.
- Examples of line item expenditures for cost pool #1 and #2 are provided on the following page.
- Ensure the time study units and percentages match the final time study summary.

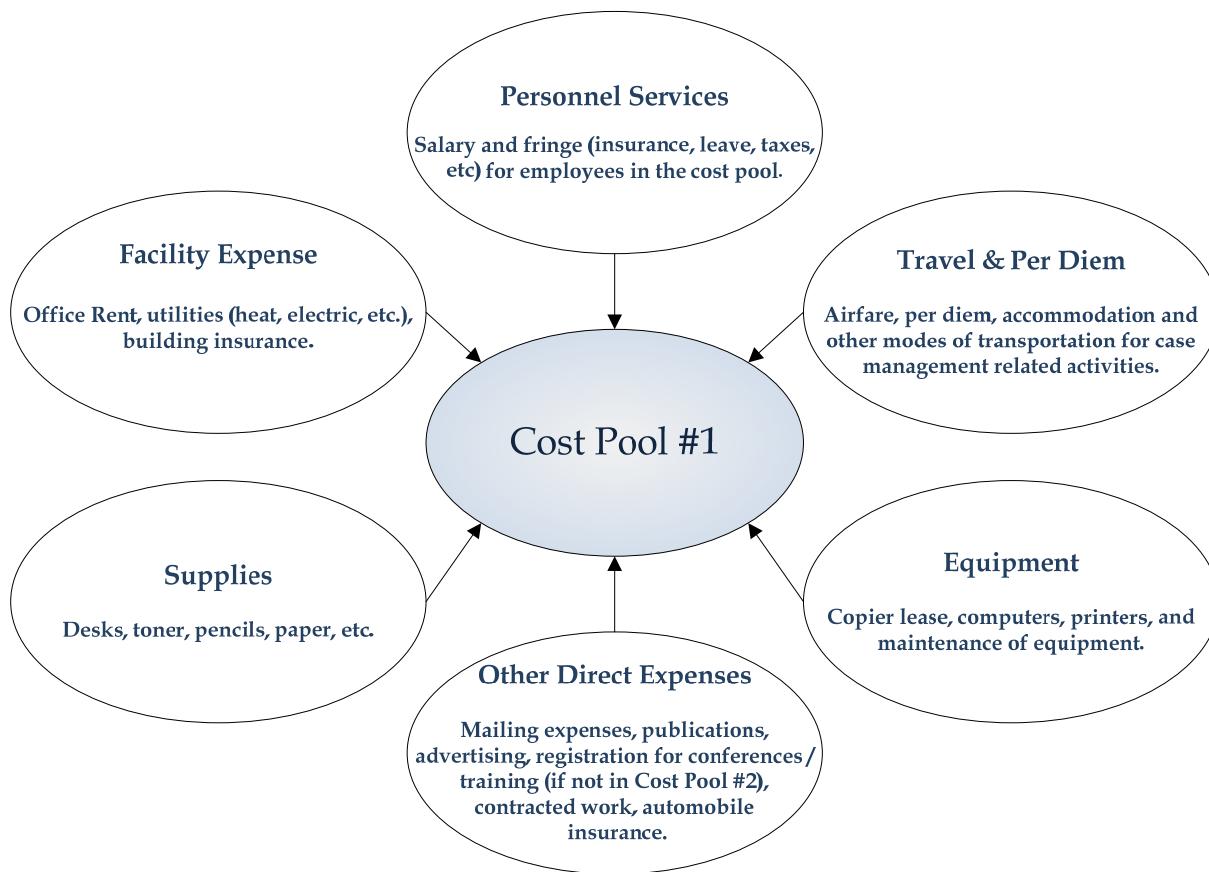
## **Travel and Training Related Expenditures**

- Expenses for travel, per diem, and accommodations related to case management activities (home visits, transports, licensing action, etc.) should be included in cost pool #1. Conferences related to topics that are not covered under Section 3 – Areas of Reimbursement
  - Training should be included in cost pool #1 provided it is an allowed administrative expenditure.
- Expenses for travel, per diem, accommodations, registration, and conference fees related to short term training may be included in cost pool #2. Topics must be allowed per Section 3 – Areas of Reimbursement – Training.
- Enter chronologically by the start date of travel/training on the appropriate travel/training related detail form which is part of the electronic COE (cost pool #1 or cost pool #2). Remember to make sure that management's expenses are allocated at the allowable percentage.

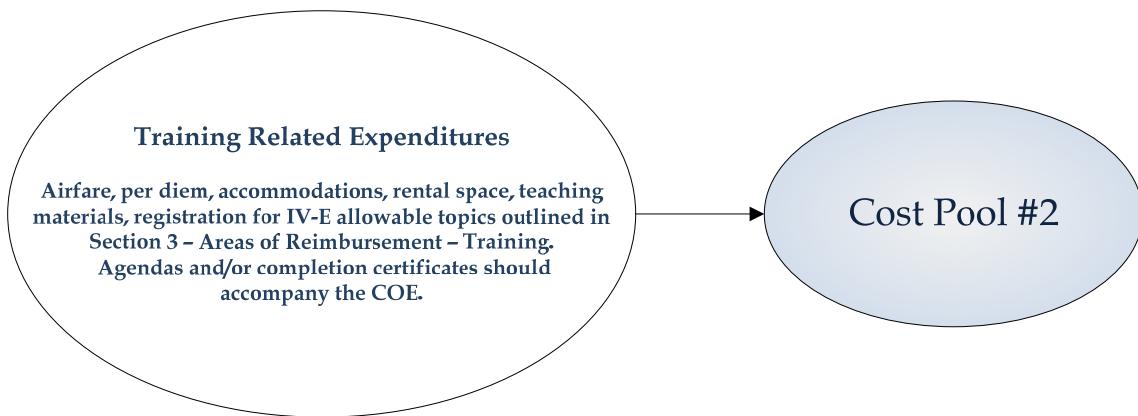
## **Time Studies**

- The totals and percentages should be entered on page one of the COE after the time studies have been reviewed and finalized. A copy of the final time studies should be sent to the Tribal Title IV-E Program Coordinator.
- All Code F clients must be listed on the time study summary tab in the Excel file. Copies of the candidate for foster care forms for each client must be submitted quarterly. Candidate status must be verified and documented at least every six months by a representative from the state.

## Expenditure Examples for Cost Pool #1



## Expenditure Examples for Cost Pool #2



## Site Reviews

The Office of Children's Services conducts site reviews on an annual or biennial basis depending on need. It is important to note that title IV-E is not a grant. It is reimbursement for expenditures that have already been paid by the Tribe/Tribal Entity. The federal government holds the State accountable for expenditures claimed against title IV-E and the State will then hold the Tribe/Tribal Entity accountable. As a result, it is the usual procedure for the federal government and the State, when conducting fiscal or program audits, to have access to all claim-generating documentation.

In order to ensure that all requirements of the program are being met and documented, OCS will review the following items during a site review. The Tribal Title IV-E Program Coordinator will contact the Tribe/Tribal Entity to schedule and outline what will be required during the review.

- **Cost Pools and Organizational Charts.** This includes staff name, title, salaries claimed, percentage of salary claimed, and the basis for that allocation amount.
- **Accounting Structures.** Overall program budget with funding sources identified; financial breakdowns; and back up of all line item expenditures claimed via the COE.
- **Other Expenditures.** Allocation methods for building, supplies, etc.
- **Time Studies.** A Title IV-E Verification for Candidacy for Foster Care form **must** be certified by the State and in the file to support any Code F activities. If this form is not in the file, then Code L must be used on the time study. OCS will conduct a random review of case files and monthly reports based upon the time study review.
- **Case Files.** A random review of case files will be conducted to verify time study activities and ensure accuracy in quarterly activity reporting.
- **Quarterly Activity Reports.** Quarterly activity reports will be cross-referenced with time studies to ensure appropriate documentation.

## Penetration / Eligibility Rate

Since FY05, the Tribal Title IV-E Penetration/Eligibility Rate basis is as follows:

The percentage of Alaska Native and Native American children in foster care statewide:

- who are in OCS custody, and
- who are served by the Tribe/Tribal Entity, referenced by the agreement, and
- who receive a foster care maintenance payment.

## Fiscal Year Limit / Indirect Rate Breakdown

The title IV-E funds that the Tribe/Tribal Entity receives are a federal reimbursement, passed through the Office of Children's Services, for expenditures that the Tribe/Tribal Entity has already incurred. The Tribal Title IV-E Program is **not in any way** a Grant or Provider Agreement in the usual sense of the terms. The only method that the Office of Children's Services has to reimburse the Tribe/Tribal Entity is through a "Provider Agreement".

Under the Tribal Title IV-E Reimbursement Program Tribes/Tribal Entities may carry forward any unencumbered funds from one fiscal year to the next. There is no fiscal year limit for the Tribal Title IV-E Program. The only restriction, as specified in the Tribal Title IV-E Provider Agreement, is that the money must be spent on the Tribe/Tribal Entity's administered child welfare services including its associated indirect costs. The Tribe/Tribal Entity may use the amount of the title IV-E revenue generated from their indirect claim for indirect costs as illustrated in the following breakdown:

### **Calculation of Allowable Indirect Reimbursement Deduction**

**Total Indirect Cost Pool #1 Expenditures**

x

**Total Time Study Code Percentages for D, E, F, G, and H**

x

**Tribal Foster Care Penetration / Eligibility Rate**

x

**Title IV-E Administration FFP (50%) Cost Pool #1**

-

**8% for Program Cost**

=

**Maximum Allowable Indirect Reimbursement Deduction**

**Total Indirect Cost Pool #2 Expenditures**

x

**Tribal Foster Care Penetration / Eligibility Rate**

x

**Title IV-E Administration FFP (50%) Cost Pool #2**

-

**8% for Program Cost**

=

**Maximum Allowable Indirect Reimbursement Deduction**

## **Tribal Title IV-E Match**

The following funds may be used as the non-federal share for the purposes of matching Tribal Title IV-E Expenditures:

### **Federal**

- Indian Child Welfare Act (ICWA) BIA Funds
- #638 Administration Funds (Indian Self-Determination Act Amendments of 1994)

### **Tribal**

- Gaming funds
- Tribal business profits
- Private foundation contributions
- Other Tribal controlled funds that are considered non-federal

### **State/Local**

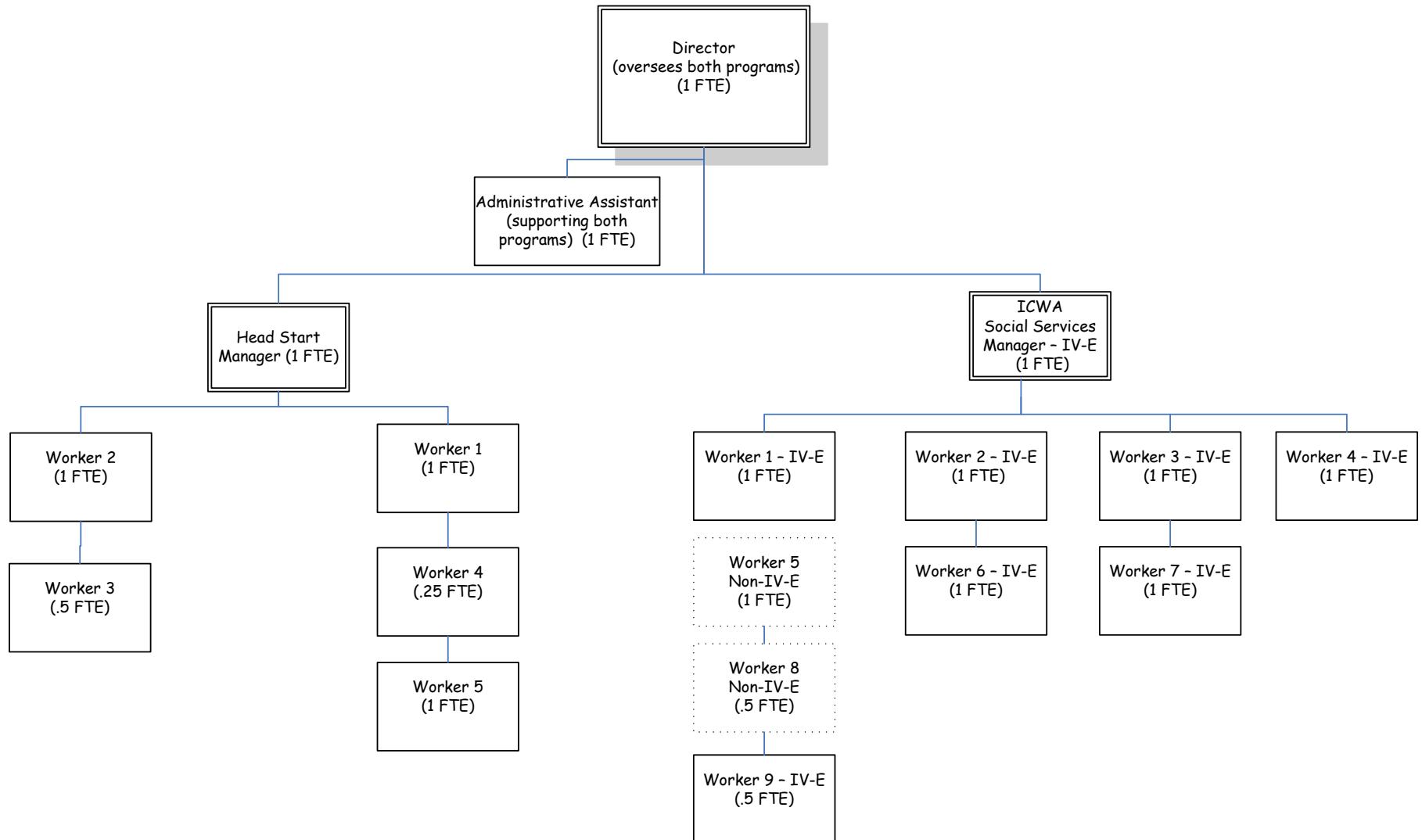
- State contracted funds if not already matched by the state

Title IV-B (Subpart 1–Child Welfare Services/Subpart 2–promoting Safe and Stable Families) may not be used to match Title IV-E.

## **Fiscal Documents**

The following documents are located at the end of this section. The Certification of Expenditure will be provided electronically to each Tribe/Tribal Entity upon execution of a Provider Agreement.

- Sample Organizational Chart
- Certification of Expenditure
  - Travel Detail (cost pool #1)
  - Training Related Expenditures (cost pool #2)
- Summary Sheet Sample



Name of Tribe/Tribal Entity  
Effective: \_\_\_\_\_

Number of Employees (excludes Director & Administrative Assistant):	13.75
Total IV-E Employees:	7.50
Total Non-IV-E Employees:	6.25
Allowable Percentage for Director & Administrative Assistant (7.5 divided by 13.75):	54.54%
Number of Employees Supervised by ICWA SS Manager:	8.00
Total IV-E Employees:	6.50
Total Non-IV-E Employees:	1.50
Allowable Percentage for ICWA SS Manager:	81.5%

Name of Tribe/Tribal Entity  
Address  
City, State, Zip

**Tribal Title IV-E Program**

Appendix G to Provider Agreement \_\_\_\_\_

**CERTIFICATION OF EXPENDITURE**

For the Quarter/Year \_\_\_\_\_ through \_\_\_\_\_

<b><u>EXPENDITURE CATEGORY</u></b>	<b><u>AMOUNT</u></b>
<b><u>Cost Pool #1</u></b>	
Personnel Services (Salary + Fringe)	_____
Travel & Per Diem *	_____
Facility Expense	_____
Supplies	_____
Equipment	_____
Other Direct Expenses	_____
Total Direct Expenses	\$ _____
Total Indirect Expense (____%)	_____
<b>Total Cost Pool #1 (Total Direct + Indirect) (50% FFP)</b>	\$ _____

**Total number of units & % of total from time studies (Cost Pool #1):**

<b>Code</b>	<b>Activity</b>	<b>Units</b>	<b>% of C through L</b>
C.	IV-E Eligibility Determination	_____	#DIV/0!
D.	Training	_____	#DIV/0!
E.	Court Related Activity	_____	#DIV/0!
F.	Case Management & Adm. In-Home	_____	#DIV/0!
G.	Case Management & Adm. Out of Home Care	_____	#DIV/0!
H.	Provider Management	_____	#DIV/0!
L.	Other Service Activity	_____	#DIV/0!
Total Units for C through L		0	#DIV/0!
M.	Non-Program Related Activity	_____	_____

## **Cost Pool #2 - Training Related Expenditures**

### **Total Direct Training Expense:**

\$ \_\_\_\_\_ -

Note: This includes training expenditures of Tribal Title IV-E staff and is limited to travel / per diem\*, registration fees, rental space, teaching materials for IV-E allowable topics. Expenditures for informal / self study are not allowed in this cost pool. (75% FFP).

### **Total Indirect Training Expense:**

\$ \_\_\_\_\_ -

Indirect rate applied to training expense (\_\_\_\_% X above training)(50% FFP)

*I Certify the above expenditures are true and correct*

---

Name and Signature

---

Date

\* Itemized Travel / Training Detail Reports must be attached.

Send to: Kim Ridle, Grants Administrator  
Department of Health & Social Services, Grants & Contracts,  
P. O. Box 110650, Juneau, Alaska 99811-0650

Copy to: Kristie Swanson, Tribal Title IV-E Program Coordinator  
[kristie.swanson@alaska.gov](mailto:kristie.swanson@alaska.gov)  
OCS, P.O. Box 110630, Juneau, Alaska 99811  
Fax: 465-3397

## **Tribal Title IV-E Program Cost Pool #1 Travel**

**Tribe/Tribal Entity:**

## Quarter:

**Tribal Title IV-E Program Cost Pool #2 Training Related Expenditures**

Tribe/Tribal Entity: \_\_\_\_\_

Quarter: \_\_\_\_\_

Travel Date(s)	Employee	Destination	Purpose (training*, home visit, etc.)	Description (airfare, per diem, hotel, etc.)	Total Trip Amount	Percent Allowed for Management	Total Amount Claimed
<b>Total Claimed:</b>				\$ -	\$ -	\$ -	\$ -

\* Training costs must be identified in Section 3 of the Title IV-E Manual in order to be listed in cost pool 2.

Name of Tribe/Tribal Entity  
 Tribal Title IV-E Pass Through Program  
 Quarterly Reimbursement Worksheet

Prepared by:  
 Date:

IV-E Administrative Rate (FFP) 50.00%

Tribal Foster Care IV-E Penetration Rate 53.4783%  
 (lagged rate from previous quarter)

**Total Cost Pool #1 Expenditures:**

**Time Study Percentages:**

Raw Hits	Percentage
Code C =	#DIV/0!
Code D =	#DIV/0!
Code E =	#DIV/0!
Code F =	#DIV/0!
Code G =	#DIV/0!

Raw Hits	Percentage
Code H =	#DIV/0!
Code L =	#DIV/0!
Total C - L	#DIV/0!
Code M =	

**Cost Pool #1 Calculations:**

Total Cost Pool #1 Expenditures \$0.00 x Time Study % Code C #DIV/0! #DIV/0!  
 x IV-E Administrative Rate 50%:

Total Cost Pool #1 Expenditures \$0.00 x Time Study % Code D,E,F,G, H #DIV/0!  
 x FC Penetration Rate 53.4783% x IV-E Administrative Rate 50%: #DIV/0!

**Total Revenue for Cost Pool #1**

**Total Cost Pool #2 Travel Expenditures:**

**Total Cost Pool #2 Indirect:**

**Cost Pool #2 Calculations:**

Total Cost Pool #2 Expenditures \$0.00 x FC Penetration Rate 53.4783%  
 x IV-E Short Term Training Rate 75% (FFY13): \$ -

Total Cost Pool #2 Indirect \$0.00 x FC Peneration Rate 53.4783%  
 x IV-E Administrative Rate 50%: \$ -

**Total Revenue for Cost Pool #2** \$ -

**State Office Use Only - Total Computable**

#DIV/0! Reported Cost Pool #1 Expen. (Code C) (50% FFP)

#DIV/0! Reported Cost Pool #1 Expen. (50% FFP)

#DIV/0! Total Cost Pool #1

\$0.00 Reported Cost Pool #2 Expen. (75% FFP - FFY13)

\$0.00 Reported Cost Pool #2 Expen. (Indirect - 50% FFP)

\$0.00 Total Cost Pool #2

#DIV/0! Total computable expenditures to be reported on CB 496.

**Federal Reporting Use Only**

0 Total Raw Hits - Codes C, F, G and H

#DIV/0! 5. Foster Care Case Management Percentage

#DIV/0! 6. Eligibility Determination Percentage

#DIV/0! 7. Provider Management

#DIV/0! 10. Candidate and Administrative Percentage

#DIV/0! Total

Total IV-E Federal Portion for Cost Pool #1 & #2 #DIV/0!

OCS Program Cost @ 8% #DIV/0!

Total Tribal Reimbursement (rounded) #DIV/0!

# Section 8 – Time Study Activity

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## Time Study Overview

Time studies are used to allocate allowable Title IV-E costs and are an integral part of the Tribal Title IV-E Reimbursement Program. Time studies determine the percentage of title IV-E allowable activities the Tribe/Tribal Entity's staff provide to children and families. These time study percentages are part of the calculation method used to determine the amount of title IV-E funds to be reimbursed.

Alaska's Tribal Title IV-E Reimbursement Program's direct service staff included in the cost pool are required to record their activities for four consecutive weeks each quarter. This allocation method was approved by Federal Region X as an alternate to the random moment time allocation that is widely used by states around the nation.

Staff must document activities in 15-minute increments for four weeks each quarter. If staff work outside of the normal work day in order to provide supervised visits/case worker visits, etc. actual time worked should be documented. For example, if an employee worked until 8:00 pm, then the work day should reflect 12 hours regardless if the employee adjusts the work hours the following day. If the employee starts at 11:00 am the next day due to working late the evening before, documentation should begin 11:00 am.

Quarters are defined as January – March, April – June, July – September, and October – December. The period of time selected for the quarter is sent out approximately three weeks prior to the beginning of the time study period.

The Tribe/Tribal Entity's Program Manager will review all staff's time studies, compile the individual time studies into one electronic document, and send the completed time studies to the Tribal Title IV-E Program Coordinator **10 days** after the end of the time study period. The Tribal Title IV-E Program Coordinator will review the time studies, either by highlighting any comments and sending them back or via a teleconference review, depending on the preference of the Tribe/Tribal Entity's Program Manager. Final time studies must be submitted before or with the Certification of Expenditures. The time study totals and percentages should be entered on the Certification of Expenditures.

## Time Study Codes

### Cost Allocation Time Study Categories

Code C	IV-E Eligibility Determination
Code D	Training for Trainers and Trainees
Code E	Court Related Activity
Code F	Case Management and Administration to Children in their Own Homes
Code G	Case Management and Administration of Out-of-Home Placements
Code H	Provider Management for Out-of-Home Care and Relative Providers
Code L	Other Service Activity
Code M	Non-Program-Related Activity

For each activity, follow the steps below to determine the appropriate activity category.

1. First consider the three specialized codes of C, D, and E to see if any of these accurately describe the scope or purpose of current activity;
2. If none of the first three codes are appropriate, examine the three case management and administration codes of F, G, and H. Code F is only code used for work with Candidates for Foster Care.
3. If none of the first six codes are appropriate, but you are engaged in programmatic activity, use Code L;
4. Finally, if you are engaged in non-programmatic activity, for example, you are on lunch break, leave, or a break then the correct code is Code M.

The definitions below include examples of each activity code and are not intended to be inclusive of every activity that may meet the definition. When engaged in an activity that is not specifically listed below, it will be necessary to exercise reasonable judgment based on the basic definitions or consult with the Tribe/Tribal Entity's Program Director or with the Tribal Title IV-E Program Coordinator with the Office of Children's Service.

## Time Study Definitions

### Code C - IV-E Eligibility Determination

Use this code for any activity that contributes to determining whether or not a child is eligible to participate in the title IV-E foster care program. Following are Code C examples:

- Collecting or verifying information from family or others which is used in the eligibility determination. For example: verifying income, collecting asset or resource information, applying for or verifying social security numbers, obtaining birth certificates, confirming family living arrangements at the time of the child's removal from the home;
- Assisting with completion of the Parent's Self -Declaration of Income and Resources form and assisting in securing court orders;
- Assisting the Regional Eligibility staff with determining and re-determining eligibility.

### Code D - Training for Trainers and Trainees

This code applies to certain training activities when the purpose of the training is the development of skills necessary for the proper and efficient administration of foster care and adoption assistance programs. This code pertains to direct service staff acquiring skills necessary to perform case management and administration to clients involved in child welfare system including functions specific to their geographical location. This code also applies to trainers that are providing training to current or prospective foster parents or relative providers that enhance their abilities to care for the children. **Training to learn how to provide direct services is not allowed.**

Following are examples of allowable training topics (additional examples provided in Section 3):

- Indian Child Welfare Act;
- Child Abuse & Neglect issues;
- Legal /Court Related;
- Cultural Competency related to children and families including Knowing Who You Are, Alaskan Native Language;
- Child Development, visitation, and the effects of separation, grief and loss;

- General substance abuse, domestic violence, fetal alcohol spectrum disorder, and mental health issues related to children and families (training must not be related to providing treatment or services);
- Activities designed to preserve, strengthen and reunify the family, if the training is not related to providing treatment or services;
- SKILLS and other classes offered by the Training Academy (must use code L for training related to forensic interviewing and conducting investigations);
- Foster Care Licensing Procedures;
- CPR, First Aid, and Stress Management;
- Child Welfare Conferences (Tribal /State, Tribal Caucus, WPIC, and ANICWA);
- HUMS Classes (Prince William Sound Community College) and other university classes related to child welfare;
- Agency personnel policies and procedures;
- Excel, Word, and other related computer program classes.

In addition, the following are some examples of informal/self study allowable training topics. Topics included are to assist staff and management to enhance their ability to efficiently administer their child welfare programs. **Training to learn how to provide direct services is not allowed.**

- Indian Child Welfare Act;
- ADHD, FASD, Emotional Issues;
- Disproportionality/Racism;
- Reading Child Welfare in the News;
- Historical Trauma; or
- Social Issues Surrounding Native Populations.

### **Code E – Court-Related Activity**

Use Code E for any activity that involves preparing a court report, preparation for or participation in a judicial proceeding involving a child who is in foster care, placed with an unlicensed relative, or in residential care. If working with a candidate for foster Care, use Code F.

Following are Code E examples:

- Appear in court when OCS is seeking legal custody of a child or the status of a child is being reviewed;
- Preparing for or participating in a court review or dispositional hearing;
- Providing documentation for the court that the agency has made reasonable efforts to prevent placement or to return the child to the home;
- Working with an Assistant Attorney General or prosecutor to prepare a case for court;
- Documenting for the court that continuation in the home is contrary to the welfare of a child;
- Filing a motion for extension of custody or supervision;
- Preparing or presenting of predisposition reports, supplemental reports, or any other reports to the court;
- Travel (driving, flying, etc.) associated with any of the above activities.

Note: If these services are provided to a child under the custody or potential custody of a Tribe use Code L.

## **Code F – Case Management & Administration to Children in Their Own Homes**

Code F applies to management or administration of the programs that provides services to families in order to prevent the placement of children in foster care or residential care. A child is a candidate for foster Care if the child has been determined to be in need of services to prevent out-of-home placement and the case plan indicates that: 1) without preventive services, removal from the home would be necessary to protect the child; and 2) candidacy has been verified at least every six months by a representative of the State. Code F is also applied to an activity that is not directed to a particular child but primarily supports the programs for prevention of out-of-home care for foster care candidates.

Following are Code F examples:

- In-home case plan development, case reviews and administrative reviews;
- Referral to or arrangement of services intended to help prevent removal of a child from his or her own home;
- Case management and supervision;
- Developing goals, service plans or written service agreements;
- Supervisory consultations or routine supervisory contacts with children and families;
- Reviewing or explaining to parents, children or care providers the administrative procedures of the agency;
- Routine contacts, other monitoring, and communication with parents, children, or other care providers on the status of the child, the case plan and goals for the child, including discussion of policies regarding daily behavior management or supervision, special activities, etc.;
- Participating in case conferences;
- Planning and completing paperwork or data entry that contributes to the above activities;
- Travel (driving, flying, etc.) associated with any of the above activities.

Note: Use Code L if activities performed for children in their own homes do not meet the above criteria. If these services are provided to a child under the custody or the potential custody of a Tribe use Code L.

Time studies submitted with any Code F activity related to child's case must include a copy of the signed *Tribal Title IV-E Verification of Candidacy for Foster Care–Tribal Case/Safety Plan or a Tribal Title IV-E Verification of Candidacy for Foster Care–OCS Case/Safety Plan form*.

Candidate status must be verified and documented every six months by a representative from the State. If the candidate status is based on a safety plan, the candidate status must be renewed according the expiration date.

The following are Title IV-E In-Home Case Plan Requirements<sup>1</sup>. Case plans must:

- be a written document which is developed jointly with the parent(s) or guardian of the child at risk of removal from their home and placed in foster care 45 CFR 1356.21;  
Note: Permission has been given by Federal Region X for Alaska Tribes to create In-Home case plans – see case plan template at the end of this section. Case plans must be signed by the parent(s), Tribal representative, and the OCS case worker or supervisor. *In-Home case plans must be developed prior to any federal claiming; and*
- include a description of the services offered and provided to prevent removal of the child from the home 45 CFR 1356.21(g); and

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<sup>1</sup> This list includes **only** Title IV-E requirements. It does not include additional requirements per OCS policy.

- clearly state that absent effective preventive services, out of home care is the planned arrangement for the child. (Child Welfare Policy Manual Section 8.1D).

The following forms are included at the end of this section.

#### ***Title IV-E Verification of Candidacy for Foster Care/OCS Case/Safety Plan***

This form is used for children that are receiving services by OCS and the Tribe/Tribal Entity. OCS has the case plan on file and is responsible for verifying that the case plan meets the requirements for Title IV-E. Candidacy status begins on the first day of the month that this form is signed.

#### ***Tribal IV-E Verification of Candidacy for Foster Care/Tribal Case/Safety Plan***

This form is used for children OCS whose case plan is developed by the Tribe/Tribal Entity. The Tribal In-Home Case Plan must be submitted and signed by an OCS representative with this form to the designee listed below. Candidacy status begins on the first day of the month that this form is signed.

#### ***Tribal In-Home Case Plan***

This case plan was designed for Tribal Workers in rural areas where OCS does not have workers present. The case plan must meet the above Title IV-E Case Plan requirements. This plan will be sent with the ***Tribal IV-E Verification of Candidacy for Foster Care – Tribal Case/Safety Plan*** that will be certified by a State Representative verifying that all federal requirements for candidacy have been met. Tribes/Tribal Entities may design their own case plan, however, are encouraged to have the Tribal Title IV-E Program Coordinator review the plan in order to ensure that it meets federal Title IV-E requirements. The case plan must state "***if preventative services are not provided, out of home care is the planned arrangement for the child(ren)***" or a similar statement.

Please send your candidate for foster care forms for approval to the ICWA Specialist in your region. Individual contact information will be provided to each Tribe/Tribal Entity by the Tribal Title IV-E Program Coordinator.

Candidate for foster care forms must be submitted with the time studies each quarter regardless if the form is still effective from the prior quarter. The Tribal Title IV-E Program Coordinator will ensure that for each case with Code F activity documented on the time study summary, a Candidate Care form is submitted. If the Candidate for Care form is not submitted or effective during the time study activities all activities will be coded L.

#### ***Code G – Case Management & Administration of Out-Of-Home Placements***

Code G applies to management and administration of child welfare programs that serve children who are placed out-of-home and their families, including emergency shelter, relative placements, family foster care, pre-adoption placement and residential care. Code G is also appropriate for activities that are not directed to a particular child but primarily supports out of home care programs.

Following are Code G examples:

- Developing goals, case plans, service plans, and written service agreements;
- Case reviews and administrative reviews; case management and supervision;
- Referral to services intended to enhance the possibility of a child's return to his own home;
- Providing public information about out-of-home care programs or prevention of out-of-home placement;

- ICWA compliance;
- Reviewing or explaining to parents, children, or care providers the administrative procedures of the agency;
- Routine contacts, other monitoring, and communication with parents, children, foster parents, or other providers on the status of the child, the case plan and goals for the child, including discussion of policies regarding daily behavior management or supervision, special activities, etc.
- Participating in permanency planning meetings, case conferences, placement committees, or classification committees;
- Arranging for Interstate Compact case actions;
- Planning and completing paperwork or data entry that contributes to the above activities including children on Trial Home Visits;
- Tribal Title IV-E related activities such as budget/agreement preparation and maintenance; certification of expenditures; quarterly activity reports; and time studies;
- Travel (driving, flying, etc.) associated with any of the above activities.

Note: If these services are provided to a child under the custody of a Tribe use Code L.

### **Code H – Provider Management for Out-Of-Home Care and Relative Providers**

Code H applies to management, administration and support of the providers for children in out of home placement including resource family placements, relative placements, family foster care, and pre-adoption placements. Code H is also appropriate for activities that are not directed to a particular child but primarily supports out-of-home care and relative providers.

Following are Code H examples:

- Recruitment, retention, home study, assisting in licensing foster homes;
- Reviewing or explaining to parents, children, or care providers the administrative procedures of the agency;
- Routine contacts and communication with foster parents;
- Assessment of providers needs and facilitating access to services;
- Notifying providers of court hearings, case conferences, etc.;
- Planning and completing paperwork or data entry that contributes to the above activities;
- Travel (driving, flying, etc.) associated with any of the above activities.

Note: If these services are provided to a tribally licensed foster parent or to unlicensed relative of a child under the custody of a Tribe use Code L unless the foster parent or unlicensed relative is in the process of being a state licensed foster parent.

### **Code L – Other Service Activity (Other Programs)**

Use Code L to record programmatic activity that does not reflect any of the earlier codes, including:

- Any service provided to a child under the custody or potential custody of a Tribe;
- Cultural Camps / Events;
- Grants related to child welfare programs (Title IV-B plan, BIA reporting);
- Classes and Training not related to topics listed in Code D;
- Private or non-subsidized adoption activity;
- Investigation of initial reports of abuse and neglect including attending training;
- Working on grants and programs such as Prevention, Wellness, Elderly or Senior Services, Housing, or other non-child welfare related programs;

- Teaching parenting classes, healthy families, and any other classes held for the community;
- Applying for ATAP for families if not related to maintaining child in their own home or reunification;
- Working on DJJ cases or child support enforcement;
- Working/supervising children in recreation centers, day care or child care, and schools;
- Arts and crafts activities;
- Arranging for health services for non-Medicaid eligible clients.

### **Code M – Non-Program Related Activity**

Code M indicates that the employee is at lunch, on a break, or on any form of leave. It also applies to worker that is unrelated to any specific Tribal program. Examples include:

- Staff meetings, luncheons, parties or retreats;
- Managing the physical plant;
- Participating in employee personnel actions or grievance procedures;
- Completing or reviewing payroll sheets.

## **Time Study Recording**

Each Tribe/Tribal Entity will be provided an electronic copy of the time study template and desk reference guides for each staff participating in the time study upon executing a Tribal Title IV-E Reimbursement Program Provider Agreement. If additional electronic copies of the time studies or the desk reference guide, please contact the Tribal Title IV-E Program Coordinator.

The time study reporting form provided at the end of this section illustrates the identifying client column as “Child’s Name or Case Number”. The identifier must be the child’s and not the parent’s name or case number. Each Tribe/Tribal Entity should decide the best tracking method and maintain consistency for future audit purposes. For instance, the Tribal Title IV-E Program Coordinator must ensure that all clients referenced on the time studies are illustrated in the Quarterly Activity Reports. In addition, Tribes/Tribal Entities must have a candidate for foster care form for all Code F activities and submitted each quarter.

Time study training is available upon request by the Tribal Title IV-E Program Coordinator.

## **Time Study Calculations**

The electronic time study template will automatically calculate the time study percentages. However, to calculate the time study percentages manually, add the sums for C through L for all time study participants. Do not include M, as these activities are neutral when determining the reimbursement percentage.

After the sum of C through L is calculated, divide the total for each code by the sum C through L. The result is an individual percentage for that code.

These percentages are part of the reimbursement formula illustrated on the Quarterly Reimbursement Worksheet and Certification of Expenditure form provided in Section 7 – Provider Agreements / Fiscal.

## Time Study and Candidate for Foster Care Forms

The following forms are located at the end of this section. All forms will be provided electronically to each Tribe/Tribal Entity upon execution of a Provider Agreement.

- Time Study Template Sample
- Summary Sheet Sample
- Title IV-E Verification of Candidacy for Foster Care – OCS Case/Safety Plan (12/12)
- Title IV-E Verification of Candidacy for Foster Care – Tribal Case/Safety Plan (12/12)
- Tribal Title IV-E Case Plan (8/12)

# Time Study Reporting Form

Code	Total	Description
C	0	IV-E Eligibility Determinations
D	0	Training
E	0	Court-Related Activity
F	0	Case Management: Children at Home
G	0	Case Management: Children Out of Home
H	0	Provider Management
L	0	Other Service Activity
M	0	Non-Program Related Activity

The "Total" column is linked to each cell in each day column.

Time	MON	Child's Name	Description	TUE	Child's Name	Description	WED	Child's Name	Description	THUR	Child's Name	Description	FRI	Child's Name	Description
	8:00 - 8:15														
8:15 - 8:30															
8:30 - 8:45															
8:45 - 9:00															
9:00 - 9:15															
9:15 - 9:30															
9:30 - 9:45															
9:45 - 10:00															
10:00 - 10:15															
10:15 - 10:30															
10:30 - 10:45															
10:45 - 11:00															
11:00 - 11:15															
11:15 - 11:30															
11:30 - 11:45															

# Time Study Summary

**ENTER TIME STUDY PERIOD HERE**

**ENTER NAME OF TRIBE/TRIBAL ENTITY HERE**

Name	Location	Code C	Code D	Code E	Code F *	Code G	Code H	Code L	Code M	Total C-M	Total C-L
Enter Worker 1 Here		0	0	0	0	0	0	0	0	0	0
Enter Worker 2 Here		0	0	0	0	0	0	0	0	0	0
Enter Worker 3 Here		0	0	0	0	0	0	0	0	0	0
Enter Worker 4 Here		0	0	0	0	0	0	0	0	0	0
Enter Worker 5 Here		0	0	0	0	0	0	0	0	0	0
Enter Worker 6 Here		0	0	0	0	0	0	0	0	0	0
Enter Worker 7 Here		0	0	0	0	0	0	0	0	0	0
Total Units		0	0	0	0	0	0	0	0	0	0
<b>Total (by Percent)</b>		#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	n/a	n/a	#DIV/0!

## \*Code F Activities

List of Code F Children First and Last Names	Signed Case Plan (Y/N)	Candidate Form Included via Email (Y/N)

Make sure signed candidate forms are included with the final time study submission even if they were

The total units and percents for each code must be entered onto the quarterly Certification of Expenditures (Section 7).

If No, to either item, Code L on Time Study

## Title IV-E Verification of Candidacy for Foster Care –OCS Case/Safety Plan

### Completed by Tribe/Tribal Organization

CHILDREN WHO ARE CANDIDATES	SEX	DOB	TRIBE
Father:			
Mother:			
Step-parent/partner:			

Reason why child is at imminent risk of removal from home: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify that the above information is accurate.

Tribal representative printed name

Signature

Date

Tribe/Tribal organization: \_\_\_\_\_

\*\*\*\*\*

### Completed by State Agency

**In order to qualify as a candidate for foster care, each of the following boxes must be checked.**

- A written case/safety plan has been developed jointly with the child's parents or guardian.
- The case/safety plan clearly states that absent effective preventive services, out of home care is the planned arrangement for the child.
- The case/safety plan includes a description of the services offered and provided to prevent removal of the child from the home.

Based upon the above information, I certify that this child meets the requirement as a candidate for foster care as defined below. Case/safety plan signed on: \_\_\_\_\_.

Candidate Status Begins: \_\_\_\_\_ Candidate Status Expires: \_\_\_\_\_

State Agency Representative Signature

Printed Name

Date

Candidacy for foster care must be determined every six months.  
File a copy of this form in the tribal case file

## Tribal IV-E Verification of Candidacy for Foster Care – Tribal Case/Safety Plan

### Completed by Tribe/Tribal Organization

CHILDREN WHO ARE CANDIDATES	SEX	DOB	TRIBE
Father:			
Mother:			
Step-parent/partner:			

Reason why child is at imminent risk of removal from home:

---

---

---

(All of the following must be completed before submitting this verification form to the state agency).

- A written case/safety plan has been developed jointly with the child's parents or guardian.
- The case/safety plan clearly states that absent effective preventive services, out of home care is the planned arrangement for the child.
- The case/safety plan includes a description of the services offered and provided to prevent removal of the child from the home.

I certify that the above information has been completed and is accurate. The case/safety plan is attached.

---

Tribal representative printed name

---

Signature

---

Date

Tribe/Tribal organization: \_\_\_\_\_

\*\*\*\*\*

### Completed by State Agency

Based on the information provided above I certify that this child meets the requirement as a candidate for foster care as defined below. Case/safety plan signed on: \_\_\_\_\_.

Candidate Status Begins: \_\_\_\_\_ Candidate Status Expires: \_\_\_\_\_

---

State agency representative printed name

---

Signature

---

Date

Candidacy for foster care must be determined every six months.  
File a copy of this form in the tribal case file



## Tribal Title IV-E In-Home Case Plan

Mother's Name: \_\_\_\_\_ DOB: \_\_\_\_\_

Father's Name: \_\_\_\_\_ DOB: \_\_\_\_\_

Address: \_\_\_\_\_

CHILDREN	SEX	DOB	TRIBE

Strengths/Protective Capacities:

List Other Case Participants:

---

---

**Objectives/Services:**

Participant Name:

Concern:

Objective.

Person Responsible for Service:

Individual Monitoring Service:

Expected Outcome:

Begin Date:

Expected End Date:

Frequency:

Services to be provided by Tribe/Tribal Agency:

Service Provider, if applicable:

Participant Name:

Concern:

Objective.

Person Responsible for Service:

Individual Monitoring Service:

Expected Outcome:

Begin Date:

Expected End Date:

Frequency:

Services to be provided by Tribe/Tribal Agency:

Service Provider, if applicable:

Participant Name:

Concern:

Objective:

Person Responsible for Service:

Individual Monitoring Service:

Expected Outcome:

Begin Date:

Expected End Date:

Frequency:

Services to be Provided by Tribe/Tribal Agency:

Service Provider, if applicable:

Are child(ren) at imminent risk for removal: Yes or No Please circle

Reason why child is at imminent risk for removal:

Summary of services offered to prevent placement:

Parent/Guardian	Printed Name	Signature	Date
I acknowledge that I was invited to participate in the development of this case plan on behalf of my child/children.			
Parent/Guardian			
Parent/Guardian			
Other Participants:	Printed Name	Signature	Date
Tribal Worker			
Tribal Worker			
Indian Custodian			
OCS Case Worker/Supervisor			

**Unless preventative services are effective, the planned arrangement for this child/these children is out of home placement.**

**EXTRA PAGES IF NEEDED:****Objectives/Services:**

Participant Name:

Concern:

Objective:

Person Responsible for Service:

Individual Monitoring Service:

Expected Outcome:

Begin Date:

Expected End Date:

Frequency:

Services to be Provided by Tribe/Tribal Agency:

Service Provider, if applicable:

Participant Name:

Concern:

Objective:

Person Responsible for Service:

Individual Monitoring Service:

Expected Outcome:

Begin Date:

Expected End Date:

Frequency:

Services to be Provided by Tribe/Tribal Agency:

Service Provider, if applicable:

**Objectives/Services:**

Participant Name:

Concern:

Objective:

Person Responsible for Service:

Individual Monitoring Service:

Expected Outcome:

Begin Date:

Expected End Date:

Frequency:

Services to be Provided by Tribe/Tribal Agency:

Service Provider, if applicable:

Participant Name:

Concern:

Objective:

Person Responsible for Service:

Individual Monitoring Service:

Expected Outcome:

Begin Date:

Expected End Date:

Frequency:

Services to be Provided by Tribe/Tribal Agency:

Service Provider, if applicable:

## Section 9 – Appendices

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# Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901-63)

## § 1901. *Congressional findings*

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds--

1. that clause 3, section 8, article I of the United States Constitution provides that ``The Congress shall have Power \* \* \* To regulate Commerce \* \* \* with Indian tribes<sup>1</sup> and, through this and other constitutional authority, Congress has plenary power over Indian affairs;
2. that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;
3. that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;
4. that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
5. that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. (Pub. L. 95-608, § 2, Nov. 8, 1978, 92 Stat. 3069.) Short Title Section 1 of Pub. L. 95-608 provided: ``That this Act [enacting this chapter] may be cited as the `Indian Child Welfare Act of 1978'."

## § 1902. *Congressional declaration of policy*

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs. (Pub. L. 95-608, § 3, Nov. 8, 1978, 92 Stat. 3069.)

## § 1903. *Definitions*

For the purposes of this chapter, except as may be specifically provided otherwise, the term--

1. "child custody proceeding" shall mean and include--
  - i. "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
  - ii. "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;
  - iii. "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
  - iv. "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an

adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

2. "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;
3. "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;
4. "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;
5. "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;
6. "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;
7. "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;
8. "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;
9. "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;
10. "reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;
11. "Secretary" means the Secretary of the Interior; and (12) ``tribal court'' means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (Pub. L. 95-608, § 4, Nov. 8, 1978, 92 Stat. 3069.) Section Referred to in Other Sections This section is referred to in sections 1727, 3202, 3653, 4302 of this title; title 12 section 4702; title 26 section 168.

#### **§ 1911. *Indian tribe jurisdiction over Indian child custody proceedings***

##### a. Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

##### b. Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

c. State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

d. Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity. (Pub. L. 95-608, title I, § 101, Nov. 8, 1978, 92 Stat. 3071.) Section Referred to in Other Sections This section is referred to in sections 1914, 1918, 1923 of this title.

**§ 1912. Pending court proceedings**

a. Notice; time for commencement of proceedings; additional time for preparation

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

b. Appointment of counsel

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

c. Examination of reports or other documents

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

d. Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

e. Foster care placement orders; evidence; determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

f. Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. (Pub. L. 95-608, title I, § 102, Nov. 8, 1978, 92 Stat. 3071.) Section Referred to in Other Sections This section is referred to in sections 1914, 1916 of this title.

**§ 1913. Parental rights; voluntary termination**

a. Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

b. Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

c. Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

d. Collateral attack; vacation of decree and return of custody; limitations

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law. (Pub. L. 95-608, title I, § 103, Nov. 8, 1978, 92 Stat. 3072.) Section Referred to in Other Sections This section is referred to in section 1914 of this title.

## **§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations**

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title. (Pub. L. 95-608, title I, § 104, Nov. 8, 1978, 92 Stat. 3072.)

## **§ 1915. Placement of Indian children**

### a. Adoptive placements; preferences

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

### b. Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with--

- i. a member of the Indian child's extended family;
- ii. a foster home licensed, approved, or specified by the Indian child's tribe;
- iii. an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- iv. an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

### c. Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

### d. Social and cultural standards applicable

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties. (e) Record of placement; availability A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe. (Pub. L. 95-608, title I, § 105, Nov. 8, 1978, 92 Stat. 3073.)

## **§ 1916. Return of custody**

### a. Petition; best interests of child

Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

### b. Removal from foster care home; placement procedure

Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed. (Pub. L. 95-608, title I, § 106, Nov. 8, 1978, 92 Stat. 3073.)

## **§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court**

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship. (Pub. L. 95-608, title I, § 107, Nov. 8, 1978, 92 Stat. 3073.)

## **§ 1918. Reassumption of jurisdiction over child custody proceedings**

### a. Petition; suitable plan; approval by Secretary

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

### b. Criteria applicable to consideration by Secretary; partial retrocession

#### 1. In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

- i. whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;
- ii. the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;
- iii. the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and (iv) the feasibility of the plan in cases of multatribal occupation of a single reservation or geographic area.

#### 2. In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial

retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

- c. Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval

If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

- d. Pending actions or proceedings unaffected

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title. (Pub. L. 95-608, title I, § 108, Nov. 8, 1978, 92 Stat. 3074.)

#### References in Text

Act of August 15, 1953, referred to in sub§ (a), is act Aug. 15, 1953, ch. 505, 67 Stat. 588, as amended, which enacted section 1162 of Title 18, Crimes and Criminal Procedure, section 1360 of Title 28, Judiciary and Judicial Procedure, and provisions set out as notes under section 1360 of Title 28. For complete classification of this Act to the Code, see Tables.

#### Section Referred to in Other Sections

This section is referred to in sections 1727, 1923 of this title.

### **§ 1919. Agreements between States and Indian tribes**

- a. Subject coverage

States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

- b. Revocation; notice; actions or proceedings unaffected

Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise. (Pub. L. 95-608, title I, § 109, Nov. 8, 1978, 92 Stat. 3074.)

#### Section Referred to in Other Sections

This section is referred to in sections 1918, 1923 of this title.

**§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception**

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

**§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child**

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

**§ 1922. Emergency removal or placement of child; termination; appropriate action**

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

**§ 1923. Effective date**

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

**§ 1931. Grants for on or near reservation programs and child welfare codes**

a. Statement of purpose; scope of programs

The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to--

1. a system for licensing or otherwise regulating Indian foster and adoptive homes;
2. the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;
3. family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;
4. home improvement programs;
5. the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

6. education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;
  7. a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and
  8. guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.
- b. Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such programs unaffected; State licensing or approval for qualification for assistance under federally assisted program

Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act [42 U.S.C. 620 et seq., 1397 et seq.] or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this chapter. The provision or possibility of assistance under this chapter shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

#### References in Text

The Social Security Act, referred to in sub§ (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles IV-B and XX of the Social Security Act are classified generally to part B (§ 620 et seq.) of subchapter IV and subchapter XX (§ 1397 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

#### **§ 1932. Grants for off-reservation programs for additional services**

The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to--

1. a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;
2. the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;
3. family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and
4. guidance, legal representation, and advice to Indian families involved in child custody proceedings. (Pub. L. 95-608, title II, § 202, Nov. 8, 1978, 92 Stat. 3076.)

#### Section Referred to in Other Sections

This section is referred to in section 1934 of this title.

#### **§ 1933. Funds for on and off reservation programs**

- a. Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into

agreements with the Secretary of Health and Human Services, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health and Human Services: Provided, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

- b. Appropriation authorization under section 13 of this title Funds for the purposes of this chapter may be appropriated pursuant to the provisions of section 13 of this title. (Pub. L. 95-608, title II, § 203, Nov. 8, 1978, 92 Stat. 3076; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

#### Change of Name

"Secretary of Health and Human Services" and "Department of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" and "Department of Health, Education, and Welfare", respectively, in sub§ (a) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

#### Section Referred to in Other Sections

This section is referred to in section 1934 of this title.

#### **§ 1934. *"Indian" defined for certain purposes***

For the purposes of sections 1932 and 1933 of this title, the term "Indian" shall include persons defined in section 1603(c) of this title.

#### **§ 1951. *Information availability to and disclosure by Secretary***

- a. Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act
- b. Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show--
  1. the name and tribal affiliation of the child;
  2. the names and addresses of the biological parents;
  3. the names and addresses of the adoptive parents; and
  4. the identity of any agency having files or information relating to such adoptive placement. Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.
- c. Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

## **§ 1952. Rules and regulations**

Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

### **Locally convenient day schools**

#### a. Sense of Congress

It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

#### b. Report to Congress; contents, etc.

The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades. (Pub. L. 95-608, title IV, § 401, Nov. 8, 1978, 92 Stat. 3078; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

#### c. Change of Name

"Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" in sub§ (b), pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

Select Committee on Indian Affairs of the Senate redesignated Committee on Indian Affairs of the Senate by section 25 of Senate Resolution No. 71, Feb. 25, 1993, One Hundred Third Congress.

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

## **§ 1962. Copies to the States**

Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

## **§ 1963. Severability**

If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby.

(1) So in original. Probably should be capitalized.

**Part E of the Social Security Act**  
**Federal Payments for Foster Care and Adoption Assistance<sup>[236]</sup>**

**PURPOSE: APPROPRIATION**

Sec. 470. [42 U.S.C. 670] For the purpose of enabling each State to provide, in appropriate cases, foster care and transitional independent living programs for children who otherwise would have been eligible for assistance under the State's plan approved under part A (as such plan was in effect on June 1, 1995) and adoption assistance for children with special needs, there are authorized to be appropriated for each fiscal year (commencing with the fiscal year which begins October 1, 1980) such sums as may be necessary to carry out the provisions of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans under this part.

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<sup>[236]</sup> See Vol. II, P.L. 104-193, §403, with respect to five-year limited eligibility of qualified aliens for Federal means-tested public benefit.

**STATE PLAN FOR FOSTER CARE AND ADOPTION ASSISTANCE<sup>[237]</sup>**

Sec. 471. [42 U.S.C. 671] (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

- (1) provides for foster care maintenance payments in accordance with section [472](#) and for adoption assistance in accordance with section [473](#);
- (2) provides that the State agency responsible for administering the program authorized by subpart 1 of part B of this title shall administer, or supervise the administration of, the program authorized by this part;
- (3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;
- (4) provides that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this title, under subtitle I of [\[238\]](#)title XX of this Act, and under any other appropriate provision of Federal law;
- (5) provides that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;
- (6) provides that the State agency referred to in paragraph (2) (hereinafter in this part referred to as the "State agency") will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;
- (7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;
- (8) subject to subsection (c), provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this title or under title I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX, or the supplemental security income program established by title XVI, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (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, (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 (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from

providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

(9) provides that the State agency will—

(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B or this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;

(10)<sup>[239]</sup> provides for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, provides that the standards so established shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this title, and provides that a waiver of any such standard may be made only on a case-by-case basis for non-safety standards (as determined by the State) in relative foster family homes for specific children in care“;

(11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness;

(12) provides for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness;

(13) provides that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part and part B of this title, which shall be conducted no less frequently than once every three years;

(14) provides (A) specific goals (which shall be established by State law on or before October 1, 1982) for each fiscal year (commencing with the fiscal year which begins on October 1, 1983) as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care with respect to whom assistance under the plan is provided during such year) who, at any time during such year, will remain in foster care after having been in such care for a period in excess of twenty-four months, and (B) a description of the steps which will be taken by the State to achieve such goals;

(15) provides that—

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an interstate placement) and to complete whatever steps are necessary to finalize the permanent placement of the child;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) the parent has—

(I) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code<sup>[240]</sup>, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code<sup>[241]</sup>, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)—

(i) a permanency hearing (as described in section [475\(5\)\(C\)](#)), which considers in-State and out-of-State permanent placement options for the child, shall be held for the child within 30 days after the determination; and

(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

(F) reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-State and out-of-State placements may be made concurrently with reasonable efforts of the type described in subparagraph (B);

(16) provides for the development of a case plan (as defined in section [475\(1\)](#)) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section [475\(5\)\(B\)](#) with respect to each such child;

(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the program funded under part A and plan approved under part D, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part;

(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may—

(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved;

(19) provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards;

(20)(A) provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28, United States Code<sup>[242]</sup>), for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part, including procedures requiring that—

(i) in any case involving a child on whose behalf such payments are to be made in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds

that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

(ii) in any case involving a child on whose behalf such payments are to be made in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

(B) <sup>[243]</sup> provides that the State shall—

(i) check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding 5 years, to enable the State to check any child abuse and neglect registry maintained by such other State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part;

(ii) comply with any request described in clause (i) that is received from another State; and

(iii) have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State, and to prevent any such information obtained pursuant to this subparagraph from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases; and

(C) <sup>[244]</sup> provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28, United States Code), on any relative guardian, and for checks described in subparagraph (C) of this paragraph on any relative guardian and any other adult living in the home of any relative guardian, before the relative guardian may receive kinship guardianship assistance payments on behalf of the child under the State plan under this part;

(21) provides for health insurance coverage (including, at State option, through the program under the State plan approved under title XIX) for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement (other than an agreement under this part) between the State and an adoptive parent or parents, and who the State has determined cannot be placed with an adoptive parent or parents without medical assistance because such child has special needs for medical, mental health, or rehabilitative care, and that with respect to the provision of such health insurance coverage—

(A) such coverage may be provided through 1 or more State medical assistance programs;

(B) the State, in providing such coverage, shall ensure that the medical benefits, including mental health benefits, provided are of the same type and kind as those that would be provided for children by the State under title XIX;

(C) in the event that the State provides such coverage through a State medical assistance program other than the program under title XIX, and the State exceeds its funding for services under such other program, any such child shall be deemed to be receiving aid or assistance under the State plan under this part for purposes of section [1902\(a\)\(10\)\(A\)\(i\)\(I\)](#); and

(D) in determining cost-sharing requirements, the State shall take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted consistent, to the extent coverage is provided through a State medical assistance program, with the rules under such program;

(22) provides that, not later than January 1, 1999, the State shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children;

(23) provides that the State shall not—

(A) deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or

(B) fail to grant an opportunity for a fair hearing, as described in paragraph (12), to an individual whose allegation of a violation of subparagraph (A) of this paragraph is denied by the State or not acted upon by the State with reasonable promptness,

(24) include a certification that, before a child in foster care under the responsibility of the State is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child and that such preparation will be continued, as necessary, after the placement of the child;

(25) provide that the State shall have in effect procedures for the orderly and timely interstate placement of children; and procedures implemented in accordance with an interstate compact, if incorporating with the procedures prescribed by paragraph (26), shall be considered to satisfy the requirement of this paragraph;

(26) provides that—

(A)(i) within 60 days after the State receives from another State a request to conduct a study of a home environment for purposes of assessing the safety and suitability of placing a child in the home, the State shall, directly or by contract—

(I) conduct and complete the study; and

(II) return to the other State a report on the results of the study, which shall address the extent to which placement in the home would meet the needs of the child; and

(ii) in the case of a home study begun on or before September 30, 2008, if the State fails to comply with clause (i) within the 60-day period as a result of circumstances beyond the control of the State (such as a failure by a Federal agency to provide the results of a background check, or the failure by any entity to provide completed medical forms, requested by the State at least 45 days before the end of the 60-day period), the State shall have 75 days to comply with clause (i) if the State documents the circumstances involved and certifies that completing the home study is in the best interests of the child; except that

(iii) this subparagraph shall not be construed to require the State to have completed, within the applicable period, the parts of the home study involving the education and training of the prospective foster or adoptive parents;

(B) the State shall treat any report described in subparagraph (A) that is received from another State or an Indian tribe (or from a private agency under contract with another State) as meeting any requirements imposed by the State for the completion of a home study before placing a child in the home, unless, within 14 days after receipt of the report, the State determines, based on grounds that are specific to the content of the report, that making a decision in reliance on the report would be contrary to the welfare of the child; and

(C) the State shall not impose any restriction on the ability of a State agency administering, or supervising the administration of, a State program operated under a State plan approved under this part to contract with a private agency for the conduct of a home study described in subparagraph (A);

(27) provides that, with respect to any child in foster care under the responsibility of the State under this part or part B and without regard to whether foster care maintenance payments are made under section [472](#) on behalf of the child, the State has in effect procedures for verifying the citizenship or immigration status of the child;

(28)<sup>[245]</sup> at the option of the State, provides for the State to enter into kinship guardianship assistance agreements to provide kinship guardianship assistance payments on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children for whom they have cared as foster parents and for whom they have committed to care on a permanent basis, as provided in section [473\(d\)](#);

(29)<sup>[246]</sup> provides that, within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence, that—

(A) specifies that the child has been or is being removed from the custody of the parent or parents of the child;

(B) explains the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;

(C) describes the requirements under paragraph (10) of this subsection to become a foster family home and the additional services and supports that are available for children placed in such a home; and

(D) if the State has elected the option to make kinship guardianship assistance payments under paragraph (28) of this subsection, describes how the relative guardian of the child may subsequently enter into an agreement with the State under section 473(d) to receive the payments;

(30)<sup>[247]</sup> provides assurances that each child who has attained the minimum age for compulsory school attendance under State law and with respect to whom there is eligibility for a payment under the State plan is a full-time elementary or secondary school student or has completed secondary school, and for purposes of this paragraph, the term “elementary or secondary school student” means, with respect to a child, that the child is—

(A) enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which the institution is located;

(B) instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which the home is located;

(C) in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which the program is located, which is administered by the local school or school district; or

(D) incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by regularly updated information in the case plan of the child;

(31)<sup>[248]</sup> provides that reasonable efforts shall be made—

(A) to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and

(B) in the case of siblings removed from their home who are not so jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless that State documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings;

(32)<sup>[249]</sup> provides that the State will negotiate in good faith with any Indian tribe, tribal organization or tribal consortium in the State that requests to develop an agreement with the State to administer all or part of the program under this part on behalf of Indian children who are under the authority of the tribe, organization, or consortium, including foster care maintenance payments on behalf of children who are placed in State or tribally licensed foster family homes, adoption assistance payments, and, if the State has elected to provide such payments, kinship guardianship assistance payments under section [473\(d\)](#), and tribal access to resources for administration, training, and data collection under this part; and

(33)<sup>[250]</sup> provides that the State will inform any individual who is adopting, or whom the State is made aware is considering adopting, a child who is in foster care under the responsibility of the State of the potential eligibility of the individual for a Federal tax credit under section 23 of the Internal Revenue Code of 1986.

(b) The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section.

(c) Use of Child Welfare Records in State Court Proceedings.—[Subsection \(a\)\(8\)](#) shall not be construed to limit the flexibility of a State in determining State policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to part B of this part, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and family.

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<sup>[237]</sup> See Vol. II, P.L. 110-351, §503, with respect to prohibition of Federal funding to unlawfully present individuals.

<sup>[238]</sup> P.L. 111-148, §6703(d)(2)(B), inserted “subtitle I of”.

<sup>[239]</sup> See Vol. II, P.L. 110-351, §104(b), with respect to a report on licensing standards for relatives.

<sup>[240]</sup> See Vol. II, 18 U.S.C. 1111(a).

<sup>[241]</sup> See Vol. II, 18 U.S.C. 1112(a).

<sup>[242]</sup> See Vol. II, 28 U.S.C. 534 (e)(3)(A).

<sup>[243]</sup> P.L. 109-248, §152(b)(2)(B), redesignated this former subparagraph (C) as subparagraph (B).

<sup>[244]</sup> P.L. 110-351, §101(c)(2)(A)(ii), added subparagraph (D). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

P.L. 110-351, §101(c)(2)(B)(i)(II), redesignated this former subparagraph (D) as subparagraph (C).

<sup>[245]</sup> P.L. 110-351, §101(a)(3), added paragraph (28). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

<sup>[246]</sup> P.L. 110-351, §103(a)(3), added paragraph (29). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

<sup>[247]</sup> P.L. 110-351, §204(b)(3), added paragraph (30). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

<sup>[248]</sup> P.L. 110-351, §206(3), added paragraph (31). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

<sup>[249]</sup> P.L. 110-351, §301(c)(1)(A)(iii), added paragraph (32). P.L. 110-351, §301(f), provided that this amendment shall take effect on October 1, 2009, without regard to whether the regulations required under subsection (e)(1) have been promulgated by such date.

See Vol. II, P.L. 110-351, §301(d), with respect to rules of construction and §301(e), with respect to regulations.

<sup>[250]</sup> P.L. 110-351, §403(3), added paragraph (33). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

#### **FOSTER CARE MAINTENANCE PAYMENTS PROGRAM<sup>[251]</sup>**

Sec. 472. [42 U.S.C. 672] (a) In General.—

(1) Eligibility.—Each State with a plan approved under this part shall make foster care maintenance payments on behalf of each child who has been removed from the home of a relative specified in section [406\(a\)](#) (as in effect on July 16, 1996) into foster care if—

(A) the removal and foster care placement met, and the placement continues to meet, the requirements of paragraph (2); and

(B) the child, while in the home, would have met the AFDC eligibility requirement of paragraph (3).

(2) Removal and foster care placement requirements.—The removal and foster care placement of a child meet the requirements of this paragraph if—

(A) the removal and foster care placement are in accordance with—

(i) a voluntary placement agreement entered into by a parent or legal guardian of the child who is the relative referred to in paragraph (1); or

(ii) a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts of the type described in section [471\(a\)\(15\)](#) for a child have been made;

(B) the child's placement and care are the responsibility of—

- (i) the State agency administering the State plan approved under section [471](#); or
- (ii) any other public agency with which the State agency administering or supervising the administration of the State plan has made an agreement which is in effect; and
- (iii)<sup>[252]</sup> an Indian tribe or a tribal organization (as defined in section 479B(a)) or a tribal consortium that has a plan approved under section 471 in accordance with section 479B; and

(C) the child has been placed in a foster family home or child-care institution.

(3) AFDC eligibility requirement.—

(A) In general.—A child in the home referred to in paragraph (1) would have met the AFDC eligibility requirement of this paragraph if the child—

(i) would have received aid under the State plan approved under section [402](#) (as in effect on July 16, 1996) in the home, in or for the month in which the agreement was entered into or court proceedings leading to the determination referred to in paragraph (2)(A)(ii) of this subsection were initiated; or

(ii)(I) would have received the aid in the home, in or for the month referred to in clause (i), if application had been made therefor; or

(II) had been living in the home within 6 months before the month in which the agreement was entered into or the proceedings were initiated, and would have received the aid in or for such month, if, in such month, the child had been living in the home with the relative referred to in paragraph (1) and application for the aid had been made.

(B) Resources determination.—For purposes of subparagraph (A), in determining whether a child would have received aid under a State plan approved under section [402](#) (as in effect on July 16, 1996), a child whose resources (determined pursuant to section [402\(a\)\(7\)\(B\)](#), as so in effect) have a combined value of not more than \$10,000 shall be considered a child whose resources have a combined value of not more than \$1,000 (or such lower amount as the State may determine for purposes of section [402\(a\)\(7\)\(B\)](#)).

(4) Eligibility of certain alien children.—Subject to title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996<sup>[253]</sup>, if the child is an alien disqualified under section 245A(h) or 210(f) of the Immigration and Nationality Act<sup>[254]</sup> from receiving aid under the State plan approved under section [402](#) in or for the month in which the agreement described in paragraph (2)(A)(i) was entered into or court proceedings leading to the determination described in paragraph (2)(A)(ii) were initiated, the child shall be considered to satisfy the requirements of paragraph (3), with respect to the month, if the child would have satisfied the requirements but for the disqualification.

(b) Foster care maintenance payments may be made under this part only on behalf of a child described in subsection (a) of this section who is—

(1) in the foster family home of an individual, whether the payments therefor are made to such individual or to a public or private child-placement or child-care agency, or

(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term "foster care maintenance payments" (as defined in section [475\(4\)](#)).

(c) For the purposes of this part, (1) the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and (2) the term "child-care institution" means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, except, in the case of a child who has attained 18 years of age, the term shall include a supervised setting in which the individual is living independently, in accordance with such

conditions as the Secretary shall establish in regulations, <sup>(255)</sup> but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

(d) Notwithstanding any other provision of this title, Federal payments may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of children removed from their homes pursuant to voluntary placement agreements as described in subsection (a), only if (at the time such amounts were expended) the State has fulfilled all of the requirements of section [422\(b\)\(8\)](#).

(e) No Federal payment may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of any child who was removed from his or her home pursuant to a voluntary placement agreement as described in subsection (a) and has remained in voluntary placement for a period in excess of 180 days, unless there has been a judicial determination by a court of competent jurisdiction (within the first 180 days of such placement) to the effect that such placement is in the best interests of the child.

(f) For the purposes of this part and part B of this title, (1) the term “voluntary placement” means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement; and (2) the term “voluntary placement agreement” means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

(g) In any case where—

(1) the placement of a minor child in foster care occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of such child as provided in subsection (a), and

(2) such parents or guardians request (in such manner and form as the Secretary may prescribe) that the child be returned to their home or to the home of a relative,

the voluntary placement agreement shall be deemed to be revoked unless the State agency opposes such request and obtains a judicial determination, by a court of competent jurisdiction, that the return of the child to such home would be contrary to the child’s best interests.

(h)(1) For purposes of title XIX, any child with respect to whom foster care maintenance payments are made under this section is deemed to be a dependent child as defined in section [406](#) (as in effect as of July 16, 1996) and deemed to be a recipient of aid to families with dependent children under part A of this title (as so in effect). For purposes of subtitle I of <sup>(256)</sup>title XX, any child with respect to whom foster care maintenance payments are made under this section is deemed to be a minor child in a needy family under a State program funded under part A of this title and is deemed to be a recipient of assistance under such part.

(2) For purposes of paragraph (1), a child whose costs in a foster family home or child care institution are covered by the foster care maintenance payments being made with respect to the child’s minor parent, as provided in section [475\(4\)\(B\)](#), shall be considered a child with respect to whom foster care maintenance payments are made under this section.

(i) Administrative Costs Associated With Otherwise Eligible Children Not In Licensed Foster Care Settings.—Expenditures by a State that would be considered administrative expenditures for purposes of section [474\(a\)\(3\)](#) if made with respect to a child who was residing in a foster family home or childcare institution shall be so considered with respect to a child not residing in such a home or institution—

(1) in the case of a child who has been removed in accordance with subsection (a) of this section from the home of a relative specified in section [406\(a\)](#) (as in effect on July 16, 1996), only for expenditures—

(A) with respect to a period of not more than the lesser of 12 months or the average length of time it takes for the State to license or approve a home as a foster home, in which the child is in the home of a relative and an application is pending for licensing or approval of the home as a foster family home; or

(B) with respect to a period of not more than 1 calendar month when a child moves from a facility not eligible for payments under this part into a foster family home or child care institution licensed or approved by the State; and

(2) in the case of any other child who is potentially eligible for benefits under a State plan approved under this part and at imminent risk of removal from the home, only if—

(A) reasonable efforts are being made in accordance with section [471\(a\)\(15\)](#) to prevent the need for, or if necessary to pursue, removal of the child from the home; and

(B) the State agency has made, not less often than every 6 months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home.

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[\[251\]](#) See Vol. II, P.L. 96-272, §102(e), with respect to the Secretary's report to Congress on the placement of children in foster care pursuant to certain voluntary agreements.

[\[252\]](#) P.L. 110-351, §301(a)(2)(C), added clause (iii), effective October 1, 2009.

[\[253\]](#) See Vol. II, P.L. 104-193, §§400-435.

[\[254\]](#) See Vol. II, P.L. 82-414, §§210(f) and 245A(h).

[\[255\]](#) P.L. 110-351, §201(b), inserted "except, in the case of a child who has attained 18 years of age, the term shall include a supervised setting in which the individual is living independently, in accordance with such conditions as the Secretary shall establish in regulations," effective October 1, 2010.

[\[256\]](#) P.L. 111-148, §6703(d)(2)(B), inserted "subtitle I of".

#### **ADOPTION AND GUARDIANSHIP ASSISTANCE PROGRAM**

Sec. 473. [42 U.S.C. 673] (a)(1)(A) Each State having a plan approved under this part shall enter into adoption assistance agreements (as defined in section [475\(3\)](#)) with the adoptive parents of children with special needs.

(B) Under any adoption assistance agreement entered into by a State with parents who adopt a child with special needs, the State—

(i) shall make payments of nonrecurring adoption expenses incurred by or on behalf of such parents in connection with the adoption of such child, directly through the State agency or through another public or nonprofit private agency, in amounts determined under paragraph (3), and

(ii) in any case where the child meets the requirements of paragraph (2), may make adoption assistance payments to such parents, directly through the State agency or through another public or nonprofit private agency, in amounts so determined.

(2)(A) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if—

(i) [\[257\]](#) in the case of a child who is not an applicable child for the fiscal year (as defined in subsection (e)), the child—

(I)(aa)(AA) was removed from the home of a relative specified in section [406\(a\)](#) (as in effect on July 16, 1996) and placed in foster care in accordance with a voluntary placement agreement with respect to which Federal payments are provided under section [474](#) (or section [403](#), as such section was in effect on July 16, 1996), or in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and

(BB) met the requirements of section [472\(a\)\(3\)](#) with respect to the home referred to in subitem (AA) of this item.

(bb) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits; or

(cc) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the minor parent of the child as provided in section [475\(4\)\(B\)](#); and

(II) has been determined by the State, pursuant to subsection (c)(1) of this section, to be a child with special needs; or

(ii)<sup>[258]</sup> in the case of a child who is an applicable child for the fiscal year (as so defined), the child—

(I)(aa) at the time of initiation of adoption proceedings was in the care of a public or licensed private child placement agency or Indian tribal organization pursuant to—

(AA) an involuntary removal of the child from the home in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; or

(BB) a voluntary placement agreement or voluntary relinquishment;

(bb) meets all medical or disability requirements of title XVI with respect to eligibility for supplemental security income benefits; or

(cc) was residing in a foster family home or child care institution with the child's minor parent, and the child's minor parent was in such foster family home or child care institution pursuant to—

(AA) an involuntary removal of the child from the home in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; or

(BB) a voluntary placement agreement or voluntary relinquishment; and

(II) has been determined by the State, pursuant to subsection (c)(2), to be a child with special needs.

(B) Section [472\(a\)\(4\)](#) shall apply for purposes of subparagraph (A) of this paragraph, in any case in which the child is an alien described in such section.

(C) A child shall be treated as meeting the requirements of this paragraph for the purpose of paragraph (1)(B)(ii) if—

(i)<sup>[259]</sup> in the case of a child who is not an applicable child for the fiscal year (as defined in subsection (e)), the child—

(I) meets the requirements of subparagraph (A)(i)(II);

(II) was determined eligible for adoption assistance payments under this part with respect to a prior adoption;

(III) is available for adoption because—

(aa) the prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated; or

(bb) the child's adoptive parents have died; and

(IV) fails to meet the requirements of subparagraph (A)(i) but would meet such requirements if—

(aa) the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part; and

(bb) the prior adoption were treated as never having occurred; or

(ii)<sup>[260]</sup> in the case of a child who is an applicable child for the fiscal year (as so defined), the child meets the requirements of subparagraph (A)(ii)(II), is determined eligible for adoption assistance payments under this part with respect to a prior adoption (or who would have been determined eligible for such payments had the Adoption and Safe Families Act of 1997<sup>[261]</sup> been in

effect at the time that such determination would have been made), and is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child's adoptive parents have died.

(D)<sup>[262]</sup> In determining the eligibility for adoption assistance payments of a child in a legal guardianship arrangement described in section 471(a)(28), the placement of the child with the relative guardian involved and any kinship guardianship assistance payments made on behalf of the child shall be considered never to have been made.

(3) The amount of the payments to be made in any case under clauses (i) and (ii) of paragraph (1)(B) shall be determined through agreement between the adoptive parents and the State or local agency administering the program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment made under clause (ii) of paragraph (1)(B) exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

(4)<sup>[263]</sup>(A) Notwithstanding any other provision of this section, a payment may not be made pursuant to this section to parents or relative guardians with respect to a child—

(i) who has attained—

(I) 18 years of age, or such greater age as the State may elect under section [475\(8\)\(B\)\(iii\)](#); or

(II) 21 years of age, if the State determines that the child has a mental or physical handicap which warrants the continuation of assistance;

(ii) who has not attained 18 years of age, if the State determines that the parents or relative guardians, as the case may be, are no longer legally responsible for the support of the child; or

(iii) if the State determines that the child is no longer receiving any support from the parents or relative guardians, as the case may be.

(B) Parents or relative guardians who have been receiving adoption assistance payments or kinship guardianship assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for the payments, or eligible for the payments in a different amount.

(5) For purposes of this part, individuals with whom a child (who has been determined by the State, pursuant to subsection (c), to be a child with special needs) is placed for adoption in accordance with applicable State and local law shall be eligible for such payments, during the period of the placement, on the same terms and subject to the same conditions as if such individuals had adopted such child.

(6)(A) For purposes of [paragraph \(1\)\(B\)\(i\)](#), the term "nonrecurring adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of State or Federal law.

(B) A State's payment of nonrecurring adoption expenses under an adoption assistance agreement shall be treated as an expenditure made for the proper and efficient administration of the State plan for purposes of section [474\(a\)\(3\)\(E\)](#).

(7)<sup>[264]</sup>(A) Notwithstanding any other provision of this subsection, no payment may be made to parents with respect to any applicable child for a fiscal year that—

(i) would be considered a child with special needs under subsection (c)(2);

(ii) is not a citizen or resident of the United States; and

(iii) was adopted outside of the United States or was brought into the United States for the purpose of being adopted.

(B) Subparagraph (A) shall not be construed as prohibiting payments under this part for an applicable child described in subparagraph (A) that is placed in foster care subsequent to the failure, as determined by the State, of the initial adoption of the child by the parents described in subparagraph (A).

(8)<sup>[265]</sup> A State shall spend an amount equal to the amount of savings (if any) in State expenditures under this part resulting from the application of paragraph (2)(A)(ii) to all applicable children for a fiscal year to provide to children or families any service (including post-adoption services) that may be provided under this part or part B, and shall document how such amounts are spent, including on post-adoption services<sup>[266]</sup>.

(b)(1) For purposes of title XIX, any child who is described in paragraph (3) is deemed to be a dependent child as defined in section [406](#) (as in effect as of July 16, 1996) and deemed to be a recipient of aid to families with dependent children under part A of this title (as so in effect) in the State where such child resides.

(2) For purposes of subtitle I of<sup>[267]</sup> title XX, any child who is described in paragraph (3) is deemed to be a minor child in a needy family under a State program funded under part A of this title and deemed to be a recipient of assistance under such part.

(3) A child described in this paragraph is any child—

(A)(i) who is a child described in subsection (a)(2), and

(ii) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued),

(B) with respect to whom foster care maintenance payments are being made under section [472](#), or

(C)<sup>[268]</sup> with respect to whom kinship guardianship assistance payments are being made pursuant to subsection (d).

(4) For purposes of paragraphs (1) and (2), a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the child's minor parent, as provided in section [475\(4\)\(B\)](#), shall be considered a child with respect to whom foster care maintenance payments are being made under section [472](#).

(c) For purposes of this section—

(1) in the case of a child who is not an applicable child for a fiscal year, the child shall not be considered a child with special needs unless<sup>[269]</sup>

(A) the State has determined that the child cannot or should not be returned to the home of his parents; and

(B) the State had first determined (A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under title XIX, and (B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under title XIX; or

(2)<sup>[270]</sup> in the case of a child who is an applicable child for a fiscal year, the child shall not be considered a child with special needs unless—

(A) the State has determined, pursuant to a criterion or criteria established by the State, that the child cannot or should not be returned to the home of his parents;

(B)(i) the State has determined that there exists with respect to the child a specific factor or condition (such as ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or

emotional handicaps) because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance under this section and medical assistance under title XIX; or

(ii) the child meets all medical or disability requirements of title XVI with respect to eligibility for supplemental security income benefits; and

(C) the State has determined that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of the parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under title XIX.

(d) [271] Kinship Guardianship Assistance Payments for Children.—

(1) Kinship guardianship assistance agreement.—

(A) In general.—In order to receive payments under section 474(a)(5), a State shall.—

(i) negotiate and enter into a written, binding kinship guardianship assistance agreement with the prospective relative guardian of a child who meets the requirements of this paragraph; and

(ii) provide the prospective relative guardian with a copy of the agreement.

(B) Minimum requirements.—The agreement shall specify, at a minimum.—

(i) the amount of, and manner in which, each kinship guardianship assistance payment will be provided under the agreement, and the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child;

(ii) the additional services and assistance that the child and relative guardian will be eligible for under the agreement;

(iii) the procedure by which the relative guardian may apply for additional services as needed; and

(iv) subject to subparagraph (D), that the State will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed \$2,000.

(C) Interstate applicability.—The agreement shall provide that the agreement shall remain in effect without regard to the State residency of the relative guardian.

(D) No effect on federal reimbursement.—Nothing in subparagraph (B)(iv) shall be construed as affecting the ability of the State to obtain reimbursement from the Federal Government for costs described in that subparagraph.

(2) Limitations on amount of kinship guardianship assistance payment.—A kinship guardianship assistance payment on behalf of a child shall not exceed the foster care maintenance payment which would have been paid on behalf of the child if the child had remained in a foster family home.

(3) Child's eligibility for a kinship guardianship assistance payment.—

(A) In general.—A child is eligible for a kinship guardianship assistance payment under this subsection if the State agency determines the following:

(i) The child has been—

(I) removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and

(II) eligible for foster care maintenance payments under section 472 while residing for at least 6 consecutive months in the home of the prospective relative guardian.

(ii) Being returned home or adopted are not appropriate permanency options for the child.

(iii) The child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child.

(iv) With respect to a child who has attained 14 years of age, the child has been consulted regarding the kinship guardianship arrangement.

(B) Treatment of siblings.—With respect to a child described in subparagraph (A) whose sibling or siblings are not so described—

(i) the child and any sibling of the child may be placed in the same kinship guardianship arrangement, in accordance with section 471(a)(31), if the State agency and the relative agree on the appropriateness of the arrangement for the siblings; and

(ii) kinship guardianship assistance payments may be paid on behalf of each sibling so placed.

(e)<sup>[D72]</sup> Applicable Child Defined.—

(1) On the basis of age.—

(A) In general.—Subject to paragraphs (2) and (3), in this section, the term “applicable child” means a child for whom an adoption assistance agreement is entered into under this section during any fiscal year described in subparagraph (B) if the child attained the applicable age for that fiscal year before the end of that fiscal year.

(B) Applicable age.—For purposes of subparagraph (A), the applicable age for a fiscal year is as follows:

In the case of fiscal year:	The applicable age is:
2010	16
2011	14
2012	12
2013	10
2014	8
2015	6
2016	4
2017	2
2018 or thereafter	any age.

(2) Exception for duration in care.—Notwithstanding paragraph (1) of this subsection, beginning with fiscal year 2010, such term shall include a child of any age on the date on which an adoption assistance agreement is entered into on behalf of the child under this section if the child—

(A) has been in foster care under the responsibility of the State for at least 60 consecutive months; and

(B) meets the requirements of subsection (a)(2)(A)(ii).

(3) Exception for member of a sibling group.—Notwithstanding paragraphs (1) and (2) of this subsection, beginning with fiscal year 2010, such term shall include a child of any age on the date on which an adoption assistance agreement is entered into on behalf of the child under this section without regard to whether the child is described in paragraph (2)(A) of this subsection if the child—

(A) is a sibling of a child who is an applicable child for the fiscal year under paragraph (1) or (2) of this subsection;

(B) is to be placed in the same adoption placement as an applicable child for the fiscal year who is their sibling; and

(C) meets the requirements of subsection [\(a\)\(2\)\(A\)\(ii\)](#).

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[\[257\]](#) P.L. 110-351, §402(1)(A)(i)(VI), struck out “if the child”— and inserted “if —” and this new clause (i). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

[\[258\]](#) P.L. 110-351, §402(1)(A)(i)(VIII), added this new clause (ii). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

[\[259\]](#) P.L. 110-351, §402(1)(A)(ii)(V), struck out “if the child—” and inserted “if —” and this new clause (i). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

[\[260\]](#) P.L. 110-351, §402(1)(A)(ii)(VIII), added clause (ii). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

[\[261\]](#) P.L. 105-89; 111 Stat. 2115.

[\[262\]](#) P.L. 110-351, §101(c)(1)(B), added subparagraph (D). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

[\[263\]](#) P.L. 110-351, §201(c), amended paragraph (4), in its entirety, effective October 1, 2010. For paragraph (4) as it formerly read, see Vol. II, Appendix J, Superseded Provisions, P.L. 110-351.

[\[264\]](#) P.L. 110-351, §402(1)(B), added paragraph (7). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

[\[265\]](#) P.L. 110-351, §402(1)(B), added paragraph (8). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

[\[266\]](#) P.L. 112-34, §106(c), inserted “, and shall document how such amounts are spent, including on post-adoption services”. For the general effective date [October 1, 2011] and the delay permitted if State legislation is required, see Vol. II, P.L. 112-34, §107.

[\[267\]](#) P.L. 111-148, §6703(d)(2)(B), inserted “subtitle I of”.

[\[268\]](#) P.L. 110-351, §101(f)(3), added subparagraph (C). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

[\[269\]](#) P.L. 110-351, §402(2)(B), struck out “this section, a child shall not be considered a child with special needs unless” and inserted “this section—” and a new paragraph (1). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

[\[270\]](#) P.L. 110-351, §402(2)(D), added this paragraph (2). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

[\[271\]](#) P.L. 110-351, §101(b), added subsection (d). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

<sup>[272]</sup> P.L. 110-351, §402(3), added subsection (e). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

## ADOPTION INCENTIVE PAYMENTS

Sec. 473A. [42 U.S.C. 673b] (a) Grant Authority.—Subject to the availability of such amounts as may be provided in advance in appropriations Acts for this purpose, the Secretary shall make a grant to each State that is an incentive-eligible State for a fiscal year in an amount equal to the adoption incentive payment payable to the State under this section for the fiscal year, which shall be payable in the immediately succeeding fiscal year.

(b) Incentive-Eligible State.—A State is an incentive-eligible State for a fiscal year if—

- (1) the State has a plan approved under this part for the fiscal year;
- (2)(A) the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;
- (B) the number of older child adoptions in the State during the fiscal year exceeds the base number of older child adoptions for the State for the fiscal year; or
- (C)<sup>[273]</sup> the State's foster child adoption rate for the fiscal year exceeds the highest ever foster child adoption rate determined for the State;
- (3) the State is in compliance with subsection (c) for the fiscal year;
- (4) the State provides health insurance coverage to any child with special needs (as determined under section [473\(c\)](#)) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents; and
- (5) the fiscal year is any of fiscal years 2008 through 2012.

(c) Data Requirements.—

(1) In general.—A State is in compliance with this subsection for a fiscal year if the State has provided to the Secretary the data described in paragraph (2)—

- (A) for fiscal years 1995 through 1997 (or, if the first fiscal year for which the State seeks a grant under this section is after fiscal year 1998, the fiscal year that precedes such first fiscal year); and
- (B) for each succeeding fiscal year that precedes the fiscal year.

(2) Determination of numbers of adoptions based on afcars data.—The Secretary shall determine the numbers of foster child adoptions, of special needs adoptions that are not older child adoptions, and of older child adoptions in a State during a fiscal year, and the foster child adoption rate for the state for the fiscal year for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section [479](#), as reported by the State and approved by the Secretary by August 1 of the succeeding fiscal year.

(3) No waiver of afcars requirements.—This section shall not be construed to alter or affect any requirement of section [479](#) or of any regulation prescribed under such section with respect to reporting of data by States, or to waive any penalty for failure to comply with such a requirement.

(d) Adoption Incentive Payment.—

(1) In general.—Except as provided in paragraph (2), the adoption incentive payment payable to a State for a fiscal year under this section shall be equal to the sum of—

- (A) \$4,000, multiplied by the amount (if any) by which the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;
- (B) \$4,000, multiplied by the amount (if any) by which the number of special needs adoptions that are not older child adoptions in the State during the fiscal year exceeds the base number of special needs adoptions that are not older child adoptions for the State for the fiscal year; and
- (C) \$8,000, multiplied by the amount (if any) by which the number of older child adoptions in the State during the fiscal year exceeds the base number of older child adoptions for the State for the fiscal year.

(2) Pro rata adjustment if insufficient funds available.—For any fiscal year, if the total amount of adoption incentive payments otherwise payable under this section for a fiscal year exceeds the amount appropriated pursuant to subsection (h) for the fiscal year, the amount of the adoption incentive payment payable to each State under this section for the fiscal year shall be—

(A) the amount of the adoption incentive payment that would otherwise be payable to the State under this section for the fiscal year; multiplied by

(B) the percentage represented by the amount so appropriated for the fiscal year, divided by the total amount of adoption incentive payments otherwise payable under this section for the fiscal year.

(3) Increased incentive payment for exceeding the highest ever foster child adoption rate.—

(A) In General.—If—

(i) for fiscal year 2009 or any fiscal year thereafter the total amount of adoption incentive payments payable under paragraph (1) of this subsection are less than the amount appropriated under subsection (h) for the fiscal year; and

(ii) a State's foster child adoption rate for that fiscal year exceeds the highest ever foster child adoption rate determined for the State, then the adoption incentive payment otherwise determined under paragraph (1) of this subsection for the State shall be increased, subject to subparagraph (C) of this paragraph, by the amount determined for the State under subparagraph (B) of this paragraph.

(B) Amount of increase.—For purposes of subparagraph (A), the amount determined under this subparagraph with respect to a State and a fiscal year is the amount equal to the product of—

(i) \$1,000; and

(ii) the excess of—

(I) the number of foster child adoptions in the State in the fiscal year; over

(II) the product (rounded to the nearest whole number) of—

(aa) the highest ever foster child adoption rate determined for the State; and

(bb) the number of children in foster care under the supervision of the State on the last day of the preceding fiscal year.

(C) Pro rata adjustment if insufficient funds available.—For any fiscal year, if the total amount of increases in adoption incentive payments otherwise payable under this paragraph for a fiscal year exceeds the amount available for such increases for the fiscal year, the amount of the increase payable to each State under this paragraph for the fiscal year shall be—

(i) the amount of the increase that would otherwise be payable to the State under this paragraph for the fiscal year; multiplied by

(ii) the percentage represented by the amount so available for the fiscal year, divided by the total amount of increases otherwise payable under this paragraph for the fiscal year.

(e) 24-Month Availability of Incentive Payments.—Payments to a State under this section in a fiscal year shall remain available for use by the State for the 24-month period beginning with the month in which the payments are made.

(f) Limitations on Use of Incentive Payments.—A State shall not expend an amount paid to the State under this section except to provide to children or families any service (including post-adoption services) that may be provided under part B or E. Amounts expended by a State in accordance with the preceding sentence shall be disregarded in determining State expenditures for purposes of Federal matching payments under sections [424](#), [434](#), and [474](#).

(g) Definitions.—As used in this section:

(1) Foster child adoption.—The term “foster child adoption” means the final adoption of a child who, at the time of adoptive placement, was in foster care under the supervision of the State.

(2) Special needs adoption.—The term “special needs adoption” means the final adoption of a child for whom an adoption assistance agreement is in effect under section [473](#).

(3) Base number of foster child adoptions.—The term “base number of foster child adoptions for a State” means, with respect to any fiscal year, the number of foster child adoptions in the State in fiscal year 2007.

(4) Base number of special needs adoptions that are not older child adoptions.—The term “base number of special needs adoptions that are not older child adoptions for a State” means, with respect to any fiscal year, the number of special needs adoptions that are not older child adoptions in the State in fiscal year 2007.

(5) Base number of older child adoptions.—The term “base number of older child adoptions for a State” means, with respect to any fiscal year, the number of older child adoptions in the State in fiscal year 2007.

(6) Older child adoptions.—The term “older child adoptions” means the final adoption of a child who has attained 9 years of age if—

(A) at the time of the adoptive placement, the child was in foster care under the supervision of the State; or (B) an adoption assistance agreement was in effect under section [473](#) with respect to the child.

(7) Highest ever foster child adoption rate.—The term “highest ever foster child adoption rate” means, with respect to any fiscal year, the highest foster child adoption rate determined for any fiscal year in the period that begins with fiscal year 2002 and ends with the preceding fiscal year.

(8) Foster child adoption rate.—The term “foster child adoption rate” means, with respect to a State and a fiscal year, the percentage determined by dividing—

(A) the number of foster child adoptions finalized in the State during the fiscal year; by

(B) the number of children in foster care under the supervision of the State on the last day of the preceding fiscal year.

(h) Limitations on Authorization of Appropriations.—

(1) In general.—For grants under subsection (a), there are authorized to be appropriated to the Secretary—

(A) \$20,000,000 for fiscal year 1999;

(B) \$43,000,000 for fiscal year 2000;

(C) \$20,000,000 for each of fiscal years 2001 through 2003, and

(D) \$43,000,000 for each of fiscal years 2004 through 2013.

(2) Availability.—Amounts appropriated under paragraph (1), or under any other law for grants under subsection (a), are authorized to remain available until expended, but not after fiscal year 2013.

(i) Technical Assistance.—

(1) In general.—The Secretary may, directly or through grants or contracts, provide technical assistance to assist States and local communities to reach their targets for increased numbers of adoptions and, to the extent that adoption is not possible, alternative permanent placements, for children in foster care.

(2) Description of the character of the technical assistance.—The technical assistance provided under paragraph (1) may support the goal of encouraging more adoptions out of the foster care system, when adoptions promote the best interests of children, and may include the following:

(A) The development of best practice guidelines for expediting termination of parental rights.

(B) Models to encourage the use of concurrent planning.

(C) The development of specialized units and expertise in moving children toward adoption as a permanency goal.

(D) The development of risk assessment tools to facilitate early identification of the children who will be at risk of harm if returned home.

(E) Models to encourage the fast tracking of children who have not attained 1 year of age into pre-adoptive placements.

(F) Development of programs that place children into pre-adoptive families without waiting for termination of parental rights.

(3) Targeting of technical assistance to the courts.—Not less than 50 percent of any amount appropriated pursuant to paragraph (4) shall be used to provide technical assistance to the courts.

(4) Limitations on authorization of appropriations.—To carry out this subsection, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed \$10,000,000 for each of fiscal years 2004 through 2006.

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<sup>[273]</sup> P.L. 110-351, §401(e)(3)(A)(iii), added subparagraph (C). For the effective date [October 7, 2008, but delay was permitted if State legislation was required], see Vol. II, P.L. 110-351, §601.

Sec. 473B. [Repealed.<sup>[274]</sup> <sup>[274]</sup> P.L. 109-239, §4(c); 120 Stat. 512. P.L. 109-239, §4(c), provided that “Effective October 1, 2010, section 473B of the Social Security Act is repealed. For Section 473B as it formerly read, see Vol. II, Appendix J, Superseded Provisions, P.L. 110-351.

#### **PAYMENTS TO STATES; ALLOTMENTS TO STATES<sup>[275]</sup>**

Sec. 474. [42 U.S.C. 674] (a) For each quarter beginning after September 30, 1980, each State which has a plan approved under this part shall be entitled to a payment equal to the sum of—

(1) an amount equal to the Federal medical assistance percentage (which shall be as defined in section 1905(b), in the case of a State other than the District of Columbia, or 70 percent, in the case of the District of Columbia) of the total amount expended during such quarter as foster care maintenance payments under section [472](#) for children in foster family homes or child-care institutions (or, with respect to such payments made during such quarter under a cooperative agreement or contract entered into by the State and an Indian tribe, tribal organization, or tribal consortium for the administration or payment of funds under this part, an amount equal to the Federal medical assistance percentage that would apply under section [479B\(d\)](#) (in this paragraph referred to as the “tribal FMAP”) if such Indian tribe, tribal organization, or tribal consortium made such payments under a program operated under that section, unless the tribal FMAP is less than the Federal medical assistance percentage that applies to the State);<sup>[276]</sup> plus

(2) an amount equal to the Federal medical assistance percentage (which shall be as defined in section 1905(b), in the case of a State other than the District of Columbia, or 70 percent, in the case of the District of Columbia) of the total amount expended during such quarter as adoption assistance payments under section [473](#) pursuant to adoption assistance agreements (or, with respect to such payments made during such quarter under a cooperative agreement or contract entered into by the State and an Indian tribe, tribal organization, or tribal consortium for the administration or payment of funds under this part, an amount equal to the Federal medical assistance percentage that would apply under section [479B\(d\)](#) (in this paragraph referred to as the “tribal FMAP”) if such Indian tribe, tribal organization, or tribal consortium made such payments under a program operated under that section, unless the tribal FMAP is less than the Federal medical assistance percentage that applies to the State)[\[271\]](#); plus

(3) subject to section [472\(i\)](#) an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the provision of child placement services and for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training (including both short-and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision,

(B) [\[278\]](#) 75 percent of so much of such expenditures (including travel and per diem expenses) as are for the short-term training of current or prospective[\[279\]](#) parents or relative guardians[\[280\]](#), the members of the staff of State-licensed or State-approved child care institutions providing care, or State-licensed or State-approved child welfare agencies providing services,[\[281\]](#) to foster or adoptive children receiving assistance under this part, and members of the staff of abuse and neglect courts, agency attorneys, attorneys representing children or parents, guardians ad litem, or other court-appointed special advocates representing children in proceedings of such courts,[\[282\]](#) in ways that increase the ability of such current or prospective parents, guardians,[\[283\]](#) staff members, institutions, attorneys and advocates[\[284\]](#) to provide support and assistance to foster and adopted children, and children living with relative guardians[\[285\]](#) whether incurred directly by the State or by contract,

(C) 50 percent of so much of such expenditures as are for the planning, design, development, or installation of statewide mechanized data collection and information retrieval systems (including 50 percent of the full amount of expenditures for hardware components for such systems) but only to the extent that such systems—

(i) meet the requirements imposed by regulations promulgated pursuant to section [479\(b\)\(2\)](#);

(ii) to the extent practicable, are capable of interfacing with the State data collection system that collects information relating to child abuse and neglect;

(iii) to the extent practicable, have the capability of interfacing with, and retrieving information from, the State data collection system that collects information relating to the eligibility of individuals under part A (for the purposes of facilitating verification of eligibility of foster children); and

(iv) are determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs carried out under a State plan approved under part B or this part; and

(D) 50 percent of so much of such expenditures as are for the operation of the statewide mechanized data collection and information retrieval systems referred to in subparagraph (C); and

(E) one-half of the remainder of such expenditures; plus

(4) an amount equal to the amount (if any) by which—

(A) the lesser of—

(i) 80 percent of the amount expended by the State during the fiscal year in which the quarter occurs to carry out programs in accordance with the State application approved under section [477\(b\)](#) for the period in which the quarter occurs (including any amendment that meets the requirements of section [477\(b\)\(5\)](#)); or

(ii) the amount allotted to the State under section [477\(c\)\(1\)](#) for the fiscal year in which the quarter occurs, reduced by the total of the amounts payable to the State under this paragraph for all prior quarters in the fiscal year; exceeds

(B) the total amount of any penalties assessed against the State under section [477\(e\)](#) during the fiscal year in which the quarter occurs; plus

(5)<sup>[286]</sup> an amount equal to the percentage by which the expenditures referred to in paragraph (2) of this subsection are reimbursed of the total amount expended during such quarter as kinship guardianship assistance payments under section [473\(d\)](#) pursuant to kinship guardianship assistance agreements.

(b)(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to which a State will be entitled under subsection (a) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with subsection (a), and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of children in the State receiving assistance under this part, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amounts so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to foster care and adoption assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(4)(A) Within 60 days after receipt of a State claim for expenditures pursuant to subsection (a), the Secretary shall allow, disallow, or defer such claim.

(B) Within 15 days after a decision to defer such a State claim, the Secretary shall notify the State of the reasons for the deferral and of the additional information necessary to determine the allowability of the claim.

(C) Within 90 days after receiving such necessary information (in readily reviewable form), the Secretary shall—

(i) disallow the claim, if able to complete the review and determine that the claim is not allowable, or

(ii) in any other case, allow the claim, subject to disallowance (as necessary)—

(I) upon completion of the review, if it is determined that the claim is not allowable; or

(II) on the basis of findings of an audit or financial management review.

(c) Automated Data Collection Expenditures.—The Secretary shall treat as necessary for the proper and efficient administration of the State plan all expenditures of a State necessary in order for the State to plan, design, develop, install, and operate data collection and information retrieval systems described in subsection (a)(3)(C), without regard to whether the systems may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under this part.

(d)(1) If, during any quarter of a fiscal year, a State's program operated under this part is found, as a result of a review conducted under section [1123A](#), or otherwise, to have violated paragraph (18) or (23) of section [471\(a\)](#) with respect to a person or to have failed to implement a corrective action plan within a period of time not to exceed 6 months with respect to such violation, then, notwithstanding subsection (a) of this section and any regulations promulgated under section [1123A\(b\)\(3\)](#), the Secretary shall reduce the amount otherwise payable to the State under this part, for that fiscal year quarter and for any subsequent quarter of such fiscal year, until the State program is found, as a result of a subsequent review under section [1123A](#), to have implemented a corrective action plan with respect to such violation, by—

(A) 2 percent of such otherwise payable amount, in the case of the 1st such finding for the fiscal year with respect to the State;

(B) 3 percent of such otherwise payable amount, in the case of the 2nd such finding for the fiscal year with respect to the State; or

(C) 5 percent of such otherwise payable amount, in the case of the 3rd or subsequent such finding for the fiscal year with respect to the State.

In imposing the penalties described in this paragraph, the Secretary shall not reduce any fiscal year payment to a State by more than 5 percent

(2) Any other entity which is in a State that receives funds under this part and which violates paragraph [\(18\)](#) or [\(23\)](#) of section [471\(a\)](#) during a fiscal year quarter with respect to any person shall remit to the Secretary all funds that were paid by the State to the entity during the quarter from such funds.

(3)(A) Any individual who is aggrieved by a violation of section [471\(a\)\(18\)](#) by a State or other entity may bring an action seeking relief from the State or other entity in any United States district court.

(B) An action under this paragraph may not be brought more than 2 years after the date the alleged violation occurred.

(4) This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978<sup>[\[287\]](#)</sup>.

(e) Discretionary Grants for Educational and Training Vouchers for Youths Aging out of Foster Care.—From amounts appropriated pursuant to section [477\(h\)\(2\)](#), the Secretary may make a grant to a State with a plan approved under this part, for a calendar quarter, in an amount equal to the lesser of—

(1) 80 percent of the amounts expended by the State during the quarter to carry out programs for the purposes described in section [477\(a\)\(6\)](#); or

(2) the amount, if any, allotted to the State under section [477\(c\)\(3\)](#) for the fiscal year in which the quarter occurs, reduced by the total of the amounts payable to the State under this subsection for such purposes for all prior quarters in the fiscal year.

(f)(1) If the Secretary finds that a State has failed to submit to the Secretary data, as required by regulation, for the data collection system implemented under section [479](#), the Secretary shall, within 30 days after the date by which the data was due to be so submitted, notify the State of the failure and that payments to the State under this part will be reduced if the State fails to submit the data, as so required, within 6 months after the date the data was originally due to be so submitted.

(2) If the Secretary finds that the State has failed to submit the data, as so required, by the end of the 6-month period referred to in paragraph (1) of this subsection, then, notwithstanding subsection (a) of this section and any regulations promulgated under section [1123A\(b\)\(3\)](#), the Secretary shall reduce the amounts otherwise payable to the State under this part, for each quarter ending in the 6-month period (and each quarter ending in each subsequent consecutively occurring 6-month period until the Secretary finds that the State has submitted the data, as so required), by—

(A) 1/6 of 1 percent of the total amount expended by the State for administration of foster care activities under the State plan approved under this part in the quarter so ending, in the case of the 1st 6-month period during which the failure continues; or

(B) 1/4 of 1 percent of the total amount so expended, in the case of the 2nd or any subsequent such 6-month period.

(g)<sup>[\[288\]](#)</sup> For purposes of this part, after the termination of a demonstration project relating to guardianship conducted by a State under section [1130](#), the expenditures of the State for the provision, to children who, as of September 30, 2008, were receiving assistance or services under the project, of the same assistance and services under the same terms and conditions that applied during the conduct of the project, are deemed to be expenditures under the State plan approved under this part.

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<sup>[275]</sup> See Vol. II, P.L. 99-177, §256, with respect to treatment of foster care and adoption assistance programs.

<sup>[276]</sup> P.L. 110-351, §301(c)(2), inserted "(or, with respect to such payments made during such quarter under a cooperative agreement or contract entered into by the State and an Indian tribe, tribal organization, or tribal consortium for the administration or payment of funds under this part, an amount equal to the Federal medical assistance percentage that would apply under section 479B(d) (in this paragraph referred to as the 'tribal FMAP') if such Indian tribe, tribal organization, or tribal consortium made such payments under a program operated under that section, unless the tribal FMAP is less than the Federal medical assistance

percentage that applies to the State)", effective October 1, 2009, without regard to whether the regulations required under subsection (e)(1) have been promulgated by such date.

See Vol. II, P.L. 110-351, §301(d), with respect to some rules of construction and §301(e), with respect to regulations.

[\[277\]](#) P.L. 110-351, §301(c)(2), inserted "(or, with respect to such payments made during such quarter under a cooperative agreement or contract entered into by the State and an Indian tribe, tribal organization, or tribal consortium for the administration or payment of funds under this part, an amount equal to the Federal medical assistance percentage that would apply under section 479B(d) (in this paragraph referred to as the 'tribal FMAP') if such Indian tribe, tribal organization, or tribal consortium made such payments under a program operated under that section, unless the tribal FMAP is less than the Federal medical assistance percentage that applies to the State)", effective October 1, 2009, without regard to whether the regulations required under subsection (e)(1) have been promulgated by such date.

See Vol. II, P.L. 110-351, §301(d), with respect to some rules of construction and §301(e), with respect to regulations.

[\[278\]](#) See Vol. II, P.L. 110-351, §203(b), with respect to the phase-in of expenditures based on the amendments made by P.L. 110-351, §203(a).

[\[279\]](#) P.L. 110-351, §203(a)(4), struck out "foster and adopted.". For the effective date [October 7, 2008, but delay was permitted if State legislation was required], see Vol. II, P.L. 110-351, §601.

[\[280\]](#) P.L. 110-351, §203(a)(1), inserted "or relative guardians.". For the effective date [October 7, 2008, but delay was permitted if State legislation was required], see Vol. II, P.L. 110-351, §601.

[\[281\]](#) P.L. 110-351, §203(a)(3), inserted ", or State-licensed or State-approved child welfare agencies providing services.". For the effective date [October 7, 2008, but delay was permitted if State legislation was required], see Vol. II, P.L. 110-351, §601.

[\[282\]](#) P.L. 110-351, §203(a)(5), inserted "and members of the staff of abuse and neglect courts, agency attorneys, attorneys representing children or parents, guardians ad litem, or other court-appointed special advocates representing children in proceedings of such courts.". For the effective date [October 7, 2008, but delay was permitted if State legislation was required], see Vol. II, P.L. 110-351, §601.

[\[283\]](#) P.L. 110-351, §203(a)(6), inserted "guardians.". For the effective date [October 7, 2008, but delay was permitted if State legislation was required], see Vol. II, P.L. 110-351, §601.

[\[284\]](#) P.L. 110-351, §203(a)(7), struck out "and institutions" and inserted "institutions, attorneys, and advocates". For the effective date [October 7, 2008, but delay was permitted if State legislation was required], see Vol. II, P.L. 110-351, §601.

[\[285\]](#) P.L. 110-351, §203(a)(8), inserted "and children living with relative guardians". For the effective date [October 7, 2008, but delay was permitted if State legislation was required], see Vol. II, P.L. 110-351, §601.

[\[286\]](#) P.L. 110-351, §101(c)(3)(B), added paragraph (5). For the effective date [October 7, 2008, but delay was permitted if State legislation was required], see Vol. II, P.L. 110-351, §601.

[\[287\]](#) P.L. 95-608; 92 Stat. 3069.

[\[288\]](#) P.L. 110-351, §101(d), added subsection (g). For the effective date [October 7, 2008, but delay was permitted if State legislation was required], see Vol. II, P.L. 110-351, §601.

## DEFINITIONS

Sec. 475. [42 U.S.C. 675] As used in this part or part B of this title:

(1) The term "case plan" means a written document which includes at least the following:

(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section [472\(a\)\(1\)](#).

(B) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(C) The health and education records of the child, including the most recent information available regarding—

(i) the names and addresses of the child's health and educational providers;

(ii) the child's grade level performance;

(iii) the child's school record;

(iv) a record of the child's immunizations;

(v) the child's known medical problems;

(vi) the child's medications; and

(vii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

(D) Where appropriate, for a child age 16 or over, a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-State and interstate placements.

(F)<sup>[289]</sup> In the case of a child with respect to whom the permanency plan is placement with a relative and receipt of kinship guardianship assistance payments under section [473\(d\)](#), a description of—

(i) the steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted;

(ii) the reasons for any separation of siblings during placement;

(iii) the reasons why a permanent placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the child's best interests;

(iv)<sup>[290]</sup> the ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment;

(v) the efforts the agency has made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefor; and

(vi) the efforts made by the State agency to discuss with the child's parent or parents the kinship guardianship assistance arrangement, or the reasons why the efforts were not made.

(G)<sup>[291]</sup> A plan for ensuring the educational stability of the child while in foster care, including—

(i) assurances that each placement<sup>[292]</sup> of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and

(ii)(I) an assurance that the State agency has coordinated with appropriate local educational agencies (as defined under section 9101 of the Elementary and Secondary Education Act of 1965) to ensure that the child remains in the school in which the child is enrolled at the time of each<sup>[293]</sup> placement; or

(II) if remaining in such school is not in the best interests of the child, assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.

(2) The term "parents" means biological or adoptive parents or legal guardians, as determined by applicable State law.

(3) The term "adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

(4)(A) The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement<sup>[294]</sup>. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence

(B) In cases where—

(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and

(ii) payments described in subparagraph (A) are being made under this part with respect to such child,

the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.

(5) The term "case review system" means a procedure for assuring that—

(A) each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child, which—

(i) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which such home is located, sets forth the reasons why such placement is in the best interests of the child, and

(ii) if the child has been placed in foster care outside the State in which the home of the parents of the child is located, requires that, periodically, but not less frequently than every 6 months, a caseworker on the staff of the State agency of the State in which the home of the parents of the child is located, of the State in which the child has been placed, or of a private agency under contract with either such State, visit such child in such home or institution and submit a report on such visit to the State agency of the State in which the home of the parents of the child is located,

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made

toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship.

(C) with respect to each such child, (i) procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a permanency hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F)) (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement, in the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options, and, in the case of a child described in subparagraph (A)(ii), the hearing shall determine whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; (ii) procedural safeguards shall be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents; and (iii) procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child;

(D) a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and a copy of the record is supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care, and is supplied at no cost at the time the child leaves foster care if the child is leaving foster care by reason of having attained the age of majority under the State law;

(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless—

(i) at the option of the State, the child is being cared for by a relative;

(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 471(a)(15)(B)(ii) are required to be made with respect to the child;

(F) a child shall be considered to have entered foster care on the earlier of—

(i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(ii) the date that is 60 days after the date on which the child is removed from the home;

(G) the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and a right to be heard in, any proceeding to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a proceeding solely on the basis of such notice and right to be heard; [295]

(H)[296] during the 90-day period immediately prior to the date on which the child will attain 18 years of age, or such greater age as the State may elect under paragraph (8)(B)(iii), whether during that period foster care maintenance payments are being made

on the child's behalf or the child is receiving benefits or services under section 477, a caseworker on the staff of the State agency, and, as appropriate, other representatives of the child provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child, includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services, includes information about the importance of designating another individual to make health care treatment decisions on behalf of the child if the child becomes unable to participate in such decisions and the child does not have, or does not want, a relative who would otherwise be authorized under State law to make such decisions, and provides the child with the option to execute a health care power of attorney, health care proxy, or other similar document recognized under State law,<sup>[297]</sup> and is as detailed as the child may elect; and<sup>[298]</sup>

(I)<sup>[299]</sup> each child in foster care under the responsibility of the State who has attained 16 years of age receives without cost a copy of any consumer report (as defined in section 603(d) of the Fair Credit Reporting Act) pertaining to the child each year until the child is discharged from care, and receives assistance (including, when feasible, from any court-appointed advocate for the child) in interpreting and resolving any inaccuracies in the report.

(6) The term "administrative review" means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

(7) The term "legal guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking. The term "legal guardian" means the caretaker in such a relationship.

(8)<sup>[300]</sup>(A) Subject to subparagraph (B), the term "child" means an individual who has not attained 18 years of age.

(B) At the option of a State, the term shall include an individual—

(i)(I) who is in foster care under the responsibility of the State;

(II) with respect to whom an adoption assistance agreement is in effect under section [473](#) if the child had attained 16 years of age before the agreement became effective; or

(III) with respect to whom a kinship guardianship assistance agreement is in effect under section [473\(d\)](#) if the child had attained 16 years of age before the agreement became effective;

(ii) who has attained 18 years of age;

(iii) who has not attained 19, 20, or 21 years of age, as the State may elect; and

(iv) who is—

(I) completing secondary education or a program leading to an equivalent credential;

(II) enrolled in an institution which provides postsecondary or vocational education;

(III) participating in a program or activity designed to promote, or remove barriers to, employment;

(IV) employed for at least 80 hours per month; or

(V) incapable of doing any of the activities described in subclauses (I) through (IV) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

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<sup>[289]</sup> P.L. 110-351, §101(c)(4), added subparagraph (F). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

[\[290\]](#) P.L. 110-351, §204(a)(1)(A), struck out clause (iv), and redesignated the former clauses (v), (vi), (vii), and (viii) as clauses (iv), (v), (vi), and (vii), respectively. For the effective date [October 7, 2008, but delay was permitted if State legislation was required], see Vol. II, P.L. 110-351, §601. For clause (iv) as it formerly read, see Vol. II, Appendix J, Superseded Provisions, P.L. 110-351.

[\[291\]](#) P.L. 110-351, §204(a)(1)(B), added subparagraph (G). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

[\[292\]](#) P.L. 112-34, §106(a)(1), struck out “the placement” and inserted “each placement”. For the general effective date [October 1, 2011] and the delay permitted if State legislation is required, see Vol. II, P.L. 112-34, §107.

[\[293\]](#) P.L. 112-34, §106(a)(2), inserted “each”. For the general effective date [October 1, 2011] and the delay permitted if State legislation is required, see Vol. II, P.L. 112-34, §107.

[\[294\]](#) P.L. 110-351, §204(a)(2)(B), inserted “, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement”. For the effective date [October 7, 2008, but delay was permitted if State legislation was required], see Vol. II, P.L. 110-351, §601.

[\[295\]](#) P.L. 112-34, §106(b)(1), struck out “and”.

[\[296\]](#) P.L. 110-351, §202(3), added subparagraph (H). For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

[\[297\]](#) P.L. 111-148, §2955(a), inserted “includes information about the importance of designating another individual to make health care treatment decisions on behalf of the child if the child becomes unable to participate in such decisions and the child does not have, or does not want, a relative who would otherwise be authorized under State law to make such decisions, and provides the child with the option to execute a health care power of attorney, health care proxy, or other similar document recognized under State law”, effective October 1, 2010.

[\[298\]](#) P.L. 112-34, §106(b)(2), struck out the period and inserted “; and”.

[\[299\]](#) P.L. 112-34, §106(b)(3), added new subparagraph (I). For the general effective date [October 1, 2011] and the delay permitted if State legislation is required, see Vol. II, P.L. 112-34, §107.

[\[300\]](#) P.L. 110-351, §201(a), added paragraph (8), effective October 1, 2010.

## TECHNICAL ASSISTANCE; DATA COLLECTION AND EVALUATION

Sec. 476. [42 U.S.C. 676] (a) The Secretary may provide technical assistance to the States to assist them to develop the programs authorized under this part and shall periodically (1) evaluate the programs authorized under this part and part B of this title and (2) collect and publish data pertaining to the incidence and characteristics of foster care and adoptions in this country.

(b) Each State shall submit statistical reports as the Secretary may require with respect to children for whom payments are made under this part containing information with respect to such children including legal status, demographic characteristics, location, and length of any stay in foster care.

(c) [\[301\]](#) Technical Assistance and Implementation Services for Tribal Programs.—

(1) Authority.—The Secretary shall provide technical assistance and implementation services that are dedicated to improving services and permanency outcomes for Indian children and their families through the provision of assistance described in paragraph (2).

(2) Assistance provided.—

(A) In general.—The technical assistance and implementation services shall be to—

(i) provide information, advice, educational materials, and technical assistance to Indian tribes and tribal organizations with respect to the types of services, administrative functions, data collection, program management, and reporting that are required under State plans under part B and this part;

(ii) assist and provide technical assistance to—

(I) Indian tribes, tribal organizations, and tribal consortia seeking to operate a program under part B or under this part through direct application to the Secretary under section [479B](#); and

(II) Indian tribes, tribal organizations, tribal consortia, and States seeking to develop cooperative agreements to provide for payments under this part or satisfy the requirements of section [422\(b\)\(9\)](#), [471\(a\)\(32\)](#), or [477\(b\)\(3\)\(G\)](#); and

(iii) subject to subparagraph (B), make one-time grants, to tribes, tribal organizations, or tribal consortia that are seeking to develop, and intend, not later than 24 months after receiving such a grant to submit to the Secretary a plan under section [471](#) to implement a program under this part as authorized by section [479B](#), that shall—

(I) not exceed \$300,000; and

(II) be used for the cost of developing a plan under section [471](#) to carry out a program under section [479B](#), including costs related to development of necessary data collection systems, a cost allocation plan, agency and tribal court procedures necessary to meet the case review system requirements under section [475\(5\)](#), or any other costs attributable to meeting any other requirement necessary for approval of such a plan under this part.

(B) Grant condition.—

(i) In general.—As a condition of being paid a grant under subparagraph (A)(iii), a tribe, tribal organization, or tribal consortium shall agree to repay the total amount of the grant awarded if the tribe, tribal organization, or tribal consortium fails to submit to the Secretary a plan under section [471](#) to carry out a program under section [479B](#) by the end of the 24-month period described in that subparagraph.

(ii) Exception.—The Secretary shall waive the requirement to repay a grant imposed by clause (i) if the Secretary determines that a tribe's, tribal organization's, or tribal consortium's failure to submit a plan within such period was the result of circumstances beyond the control of the tribe, tribal organization, or tribal consortium.

(C) Implementation authority.—The Secretary may provide the technical assistance and implementation services described in subparagraph (A) either directly or through a grant or contract with public or private organizations knowledgeable and experienced in the field of Indian tribal affairs and child welfare.

(3) Appropriation.—There is appropriated to the Secretary, out of any money in the Treasury of the United States not otherwise appropriated, \$3,000,000 for fiscal year 2009 and each fiscal year thereafter to carry out this subsection

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<sup>[301]</sup> P.L. 110-351, §302(c), added subsection (c). For the effective date [October 7, 2008, but delay was permitted if State legislation was required], see Vol. II, P.L. 110-351, §601.

#### JOHN H. CHAFEE FOSTER CARE INDEPENDENCE PROGRAM

Sec. 477. [42 U.S.C. 677] (a) Purpose.—The purpose of this section is to provide States with flexible funding that will enable programs to be designed and conducted—

(1) to identify children who are likely to remain in foster care until 18 years of age and to help these children make the transition to self-sufficiency by providing services such as assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills,

substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention);

(2) to help children who are likely to remain in foster care until 18 years of age receive the education, training, and services necessary to obtain employment;

(3) to help children who are likely to remain in foster care until 18 years of age prepare for and enter postsecondary training and education institutions;

(4) to provide personal and emotional support to children aging out of foster care, through mentors and the promotion of interactions with dedicated adults;

(5) to provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood;

(6) to make available vouchers for education and training, including postsecondary training and education, to youths who have aged out of foster care; and

(7) to provide the services referred to in this subsection to children who, after attaining 16 years of age, have left foster care for kinship guardianship or adoption.

(b) Applications.—

(1) In General.—A State may apply for funds from its allotment under subsection (c) for a period of five consecutive fiscal years by submitting to the Secretary, in writing, a plan that meets the requirements of paragraph (2) and the certifications required by paragraph (3) with respect to the plan.

(2) State plan.—A plan meets the requirements of this paragraph if the plan specifies which State agency or agencies will administer, supervise, or oversee the programs carried out under the plan, and describes how the State intends to do the following:

(A) Design and deliver programs to achieve the purposes of this section.

(B) Ensure that all political subdivisions in the State are served by the program, though not necessarily in a uniform manner.

(C) Ensure that the programs serve children of various ages and at various stages of achieving independence.

(D) Involve the public and private sectors in helping adolescents in foster care achieve independence.

(E) Use objective criteria for determining eligibility for benefits and services under the programs, and for ensuring fair and equitable treatment of benefit recipients.

(F) Cooperate in national evaluations of the effects of the programs in achieving the purposes of this section.

(3) Certifications.—The certifications required by this paragraph with respect to a plan are the following:

(A) A certification by the chief executive officer of the State that the State will provide assistance and services to children who have left foster care because they have attained 18 years of age, and who have not attained 21 years of age.

(B) A certification by the chief executive officer of the State that not more than 30 percent of the amounts paid to the State from its allotment under subsection (c) for a fiscal year will be expended for room or board for children who have left foster care because they have attained 18 years of age, and who have not attained 21 years of age.

(C) A certification by the chief executive officer of the State that none of the amounts paid to the State from its allotment under subsection (c) will be expended or room or board for any child who has not attained 18 years of age.

(D) A certification by the chief executive officer of the State that the State will use training funds provided under the program of Federal payments for foster care and adoption assistance to provide training to help foster parents, adoptive parents, workers in group homes, and case managers understand and address the issues confronting adolescents preparing for independent living, and will, to the extent possible, coordinate such training with the independent living program conducted for adolescents.

(E) A certification by the chief executive officer of the State that the State has consulted widely with public and private organizations in developing the plan and that the State has given all interested members of the public at least 30 days to submit comments on the plan.

(F) A certification by the chief executive officer of the State that the State will make every effort to coordinate the State programs receiving funds provided from an allotment made to the State under subsection (c) with other Federal and State programs for youth (especially transitional living youth projects funded under part B of title III of the Juvenile Justice and Delinquency Prevention Act of 1974), abstinence education programs, local housing programs, programs for disabled youth (especially sheltered workshops), and school-to-work programs offered by high schools or local workforce agencies.

(G) A certification by the chief executive officer of the State that each Indian tribe in the State has been consulted about the programs to be carried out under the plan; that there have been efforts to coordinate the programs with such tribes; that benefits and services under the programs will be made available to Indian children in the State on the same basis as to other children in the State; and that the State will negotiate in good faith with any Indian tribe, tribal organization, or tribal consortium in the State that does not receive an allotment under subsection (j)(4) for a fiscal year and that requests to develop an agreement with the State to administer, supervise, or oversee the programs to be carried out under the plan with respect to the Indian children who are eligible for such programs and who are under the authority of the tribe, organization, or consortium and to receive from the State an appropriate portion of the State allotment under subsection (c) for the cost of such administration, supervision, or oversight.<sup>[302]</sup>

(H) A certification by the chief executive officer of the State that the State will ensure that adolescents participating in the program under this section participate directly in designing their own program activities that prepare them for independent living and that the adolescents accept personal responsibility for living up to their part of the program.

(I) A certification by the chief executive officer of the State that the State has established and will enforce standards and procedures to prevent fraud and abuse in the programs carried out under the plan.

(J) A certification by the chief executive officer of the State that the State educational and training voucher program under this section is in compliance with the conditions specified in subsection (i), including a statement describing methods the State will use—

(i) to ensure that the total amount of educational assistance to a youth under this section and under other Federal and Federally supported programs does not exceed the limitation specified in subsection (i)(5); and

(ii) to avoid duplication of benefits under this and any other Federal or Federally assisted benefit program.

(K)<sup>[303]</sup> A certification by the chief executive officer of the State that the State will ensure that an adolescent participating in the program under this section are provided with education about the importance of designating another individual to make health care treatment decisions on behalf of the adolescent if the adolescent becomes unable to participate in such decisions and the adolescent does not have, or does not want, a relative who would otherwise be authorized under State law to make such decisions, whether a health care power of attorney, health care proxy, or other similar document is recognized under State law, and how to execute such a document if the adolescent wants to do so.

(4) Approval.—The Secretary shall approve an application submitted by a State pursuant to paragraph (1) for a period if—

(A) the application is submitted on or before June 30 of the calendar year in which such period begins; and

(B) the Secretary finds that the application contains the material required by paragraph (1).

(5) Authority to implement certain amendments; notification.—A State with an application approved under paragraph (4) may implement any amendment to the plan contained in the application if the application, incorporating the amendment, would be approvable under paragraph (4). Within 30 days after a State implements any such amendment, the State shall notify the Secretary of the amendment.

(6) Availability.—The State shall make available to the public any application submitted by the State pursuant to paragraph (1), and a brief summary of the plan contained in the application.

(c) Allotments to states.—

(1) General program allotment.—From the amount specified in subsection (h)(1) that remains after applying subsection (g)(2) for a fiscal year, the Secretary shall allot to each State with an application approved under subsection (b) for the fiscal year the amount which bears the ratio to such remaining amount equal to the State foster care ratio, as adjusted in accordance with paragraph (2).

(2) Hold harmless provision.—

(A) In general.—The Secretary shall allot to each State whose allotment for a fiscal year under paragraph (1) is less than the greater of \$500,000 or the amount payable to the State under this section for fiscal year 1998, an additional amount equal to the difference between such allotment and such greater amount.

(B) Ratable reduction of certain allotments.—In the case of a State not described in subparagraph (A) of this paragraph for a fiscal year, the Secretary shall reduce the amount allotted to the State for the fiscal year under paragraph (1) by the amount that bears the same ratio to the sum of the differences determined under subparagraph (A) of this paragraph for the fiscal year as the excess of the amount so allotted over the greater of \$500,000 or the amount payable to the State under this section for fiscal year 1998 bears to the sum of such excess amounts determined for all such States.

(3) Voucher program allotment.—From the amount, if any, appropriated pursuant to subsection (h)(2) for a fiscal year, the Secretary may allot to each State with an application approved under subsection (b) for the fiscal year an amount equal to the State foster care ratio multiplied by the amount so specified.

(4) State foster care ratio.—In this subsection, the term “State foster care ratio” means the ratio of the number of children in foster care under a program of the State in the most recent fiscal year for which the information is available to the total number of children in foster care in all States for the most recent fiscal year.

(d) In General.—

(1) In General.—A State to which an amount is paid from its allotment under subsection (c) may use the amount in any manner that is reasonably calculated to accomplish the purposes of this section.

(2) No supplantation of other funds available for same general purposes.—The amounts paid to a State from its allotment under subsection (c) shall be used to supplement and not supplant any other funds which are available for the same general purposes in the State.

(3) Two-year availability of funds.—Payments made to a State under this section for a fiscal year shall be expended by the State in the fiscal year or in the succeeding fiscal year.

(4) Reallocation of unused funds.—If a State does not apply for funds under this section for a fiscal year within such time as may be provided by the Secretary, the funds to which the State would be entitled for the fiscal year shall be reallocated to 1 or more other States on the basis of their relative need for additional payments under this section, as determined by the Secretary.

(e) Penalties.—

(1) Use of grant in violation of this part.—If the Secretary is made aware, by an audit conducted under chapter 75 of title 31, United States Code <sup>[304]</sup>, or by any other means, that a program receiving funds from an allotment made to a State under subsection (c) has been operated in a manner that is inconsistent with, or not disclosed in the State application approved under subsection (b), the Secretary shall assess a penalty against the State in an amount equal to not less than 1 percent and not more than 5 percent of the amount of the allotment.

(2) Failure to comply with data reporting requirement.—The Secretary shall assess a penalty against a State that fails during a fiscal year to comply with an information collection plan implemented under subsection (f) in an amount equal to not less than 1 percent and not more than 5 percent of the amount allotted to the State for the fiscal year.

(3) Penalties based on degree of noncompliance.—The Secretary shall assess penalties under this subsection based on the degree of noncompliance.

(f) Data collection and Performance Measurement.—

(1) In general.—The Secretary, in consultation with State and local public officials responsible for administering independent living and other child welfare programs, child welfare advocates, Members of Congress, youth service providers, and researchers, shall—

(A) develop outcome measures (including measures of educational attainment, high school diploma, employment, avoidance of dependency, homelessness, nonmarital childbirth, incarceration, and high-risk behaviors) that can be used to assess the performance of States in operating independent living programs;

(B) identify data elements needed to track—

(i) the number and characteristics of children receiving services under this section;

(ii) the type and quantity of services being provided; and

(iii) State performance on the outcome measures; and

(C) develop and implement a plan to collect the needed information beginning with the second fiscal year beginning after the date of the enactment of this section.

(2) Report to the congress.—Within 12 months after the date of the enactment of this section, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report detailing the plans and timetable for collecting from the States the information described in paragraph (1) and a proposal to impose penalties consistent with paragraph (e)(2) on States that do not report data.

(g) Evaluations.—

(1) General.—The Secretary shall conduct evaluations of such State programs funded under this section as the Secretary deems to be innovative or of potential national significance. The evaluation of any such program shall include information on the effects of the program on education, employment, and personal development. To the maximum extent practicable, the evaluations shall be based on rigorous scientific standards including random assignment to treatment and control groups. The Secretary is encouraged to work directly with State and local governments to design methods for conducting the evaluations, directly or by grant, contract, or cooperative agreement.

(2) Funding of evaluations.—The Secretary shall reserve 1.5 percent of the amount specified in subsection (h) for a fiscal year to carry out, during the fiscal year, evaluation, technical assistance, performance measurement, and data collection activities related to this section, directly or through grants, contracts, or cooperative agreements with appropriate entities.

(h) Limitation on authorization of appropriations.—To carry out this section and for payments to States under section [474\(a\)\(4\)](#), there are authorized to be appropriated to the Secretary for each fiscal year—

(1) \$140,000,000, which shall be available for all purposes under this section; and

(2) an additional \$60,000,000, which are authorized to be available for payments to States for education and training vouchers for youths who age out of foster care, to assist the youths to develop skills necessary to lead independent and productive lives.

(i) Educational and Training Vouchers.—The following conditions shall apply to a State educational and training voucher program under this section:

- (1) Vouchers under the program may be available to youths otherwise eligible for services under the State program under this section.
- (2) For purposes of the voucher program, youths who, after attaining 16 years of age, are adopted from, or enter kinship guardianship from, foster care<sup>[305]</sup> may be considered to be youths otherwise eligible for services under the State program under this section.
- (3) The State may allow youths participating in the voucher program on the date they attain 21 years of age to remain eligible until they attain 23 years of age, as long as they are enrolled in a postsecondary education or training program and are making satisfactory progress toward completion of that program.
- (4) The voucher or vouchers provided for an individual under this section—
- (A) may be available for the cost of attendance at an institution of higher education, as defined in section 102 of the Higher Education Act of 1965<sup>[306]</sup>, and
- (B) shall not exceed the lesser of \$5,000 per year or the total cost of attendance, as defined in section 472 of that Act.
- (5) The amount of a voucher under this section may be disregarded for purposes of determining the recipient's eligibility for, or the amount of, any other Federal or Federally supported assistance, except that the total amount of educational assistance to a youth under this section and under other Federal and Federally supported programs shall not exceed the total cost of attendance, as defined in section 472 of the Higher Education Act of 1965<sup>[307]</sup>, and except that the State agency shall take appropriate steps to prevent duplication of benefits under this and other Federal or Federally supported programs.
- (6) The program is coordinated with other appropriate education and training programs.
- (j) <sup>[308]</sup> Authority for an Indian Tribe, Tribal Organization, or Tribal Consortium to Receive an Allotment.—
- (1) In general.—An Indian tribe, tribal organization, or tribal consortium with a plan approved under section 479B, or which is receiving funding to provide foster care under this part pursuant to a cooperative agreement or contract with a State, may apply for an allotment out of any funds authorized by paragraph (1) or (2) (or both) of subsection (h) of this section.
- (2) Application.—A tribe, organization, or consortium desiring an allotment under paragraph (1) of this subsection shall submit an application to the Secretary to directly receive such allotment that includes a plan which—
- (A) satisfies such requirements of paragraphs (2) and (3) of subsection (b) as the Secretary determines are appropriate;
- (B) contains a description of the tribe's, organization's, or consortium's consultation process regarding the programs to be carried out under the plan with each State for which a portion of an allotment under subsection (c) would be redirected to the tribe, organization, or consortium; and
- (C) contains an explanation of the results of such consultation, particularly with respect to—
- (i) determining the eligibility for benefits and services of Indian children to be served under the programs to be carried out under the plan; and
- (ii) the process for consulting with the State in order to ensure the continuity of benefits and services for such children who will transition from receiving benefits and services under programs carried out under a State plan under subsection (b)(2) to receiving benefits and services under programs carried out under a plan under this subsection.
- (3) Payments.—The Secretary shall pay an Indian tribe, tribal organization, or tribal consortium with an application and plan approved under this subsection from the allotment determined for the tribe, organization, or consortium under paragraph (4) of this subsection in the same manner as is provided in section 474(a)(4) (and, where requested, and if funds are appropriated, section 474(e)) with respect to a State, or in such other manner as is determined appropriate by the Secretary, except that in no case shall an Indian tribe, a tribal organization, or a tribal consortium receive a lesser proportion of such funds than a State is authorized to receive under those sections.

(4) Allotment.—From the amounts allotted to a State under subsection (c) of this section for a fiscal year, the Secretary shall allot to each Indian tribe, tribal organization, or tribal consortium with an application and plan approved under this subsection for that fiscal year an amount equal to the tribal foster care ratio determined under paragraph (5) of this subsection for the tribe, organization, or consortium multiplied by the allotment amount of the State within which the tribe, organization, or consortium is located. The allotment determined under this paragraph is deemed to be a part of the allotment determined under section [477\(c\)](#) for the State in which the Indian tribe, tribal organization, or tribal consortium is located.

(5) Tribal foster care ratio.—For purposes of paragraph (4), the tribal foster care ratio means, with respect to an Indian tribe, tribal organization, or tribal consortium, the ratio of—

(A) the number of children in foster care under the responsibility of the Indian tribe, tribal organization, or tribal consortium (either directly or under supervision of the State), in the most recent fiscal year for which the information is available; to

(B) the sum of—

(i) the total number of children in foster care under the responsibility of the State within which the Indian tribe, tribal organization, or tribal consortium is located; and

(ii) the total number of children in foster care under the responsibility of all Indian tribes, tribal organizations, or tribal consortia in the State (either directly or under supervision of the State) that have a plan approved under this subsection.

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<sup>[302]</sup> P.L. 110-351, §301(c)(1)(B)(ii), struck out the period and inserted the following: “; and that the State will negotiate in good faith with any Indian tribe, tribal organization, or tribal consortium in the State that does not receive an allotment under subsection (j)(4) for a fiscal year and that requests to develop an agreement with the State to administer, supervise, or oversee the programs to be carried out under the plan with respect to the Indian children who are eligible for such programs and who are under the authority of the tribe, organization, or consortium and to receive from the State an appropriate portion of the State allotment under subsection (c) for the cost of such administration, supervision, or oversight.”, effective October 1, 2009, without regard to whether the regulations required under subsection (e)(1) have been promulgated by such date.

See Vol. II, P.L. 110-351, §301(d), with respect to some rules of construction and §301(e), with respect to regulations.

<sup>[303]</sup> P.L. 111-148, §2955(b), added this subparagraph (K), effective October 1, 2010.

<sup>[304]</sup> See Vol. II, 31 U.S.C. chapter 7501–7507.

<sup>[305]</sup> P.L. 110-351, §101(e)(2), struck out “adopted from foster care after attaining age 16” and inserted “who, after attaining 16 years of age, are adopted from, or enter kinship guardianship from, foster care”. For the effective date [October 7, 2008, but delay is permitted if State legislation is required], see Vol. II, P.L. 110-351, §601.

<sup>[306]</sup> See Vol. II, P.L. 89-329, §102.

<sup>[307]</sup> See Vol. II, P.L. 89-329, §472.

<sup>[308]</sup> P.L. 110-351, §301(b), added subsection (j), effective October 1, 2009, without regard to whether the regulations required under subsection (e)(1) have been promulgated by such date.

## RULE OF CONSTRUCTION

Sec. 478. [42 U.S.C. 678] Nothing in this part shall be construed as precluding State courts from exercising their discretion to protect the health and safety of children in individual cases, including cases other than those described in section [471\(a\)\(15\)\(D\)](#).

## **COLLECTION OF DATA RELATING TO ADOPTION AND FOSTER CARE<sup>[309]</sup>**

Sec. 479. [42 U.S.C. 679] (a)(1) Not later than 90 days after the date of the enactment of this subsection<sup>[310]</sup>, the Secretary shall establish an Advisory Committee on Adoption and Foster Care Information (in this section referred to as the “Advisory Committee”) to study the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

(2) The study required by paragraph (1) shall—

(A) identify the types of data necessary to—

(i) assess (on a continuing basis) the incidence, characteristics, and status of adoption and foster care in the United States, and

(ii) develop appropriate national policies with respect to adoption and foster care;

(B) evaluate the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies;

(C) assess the validity of various methods of collecting data with respect to adoption and foster care; and

(D) evaluate the financial and administrative impact of implementing each such method.

(3) Not later than October 1, 1987, the Advisory Committee shall submit to the Secretary and the Congress a report setting forth the results of the study required by paragraph (1) and evaluating and making recommendations with respect to the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

(4)(A) Subject to subparagraph (B), the membership and organization of the Advisory Committee shall be determined by the Secretary.

(B) The membership of the Advisory Committee shall include representatives of—

(i) private, nonprofit organizations with an interest in child welfare (including organizations that provide foster care and adoption services),

(ii) organizations representing State and local governmental agencies with responsibility for foster care and adoption services,

(iii) organizations representing State and local governmental agencies with responsibility for the collection of health and social statistics,

(iv) organizations representing State and local judicial bodies with jurisdiction over family law,

(v) Federal agencies responsible for the collection of health and social statistics, and

(vi) organizations and agencies involved with privately arranged or international adoptions.

(5) After the date of the submission of the report required by paragraph (3), the Advisory Committee shall cease to exist.

(b)(1)(A) Not later than July 1, 1988, the Secretary shall submit to the Congress a report that—

(i) proposes a method of establishing, administering, and financing a system for the collection of data relating to adoption and foster care in the United States,

(ii) evaluates the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies, and

(iii) evaluates the impact of the system proposed under clause (i) on the agencies with responsibility for implementing it.

(B) The report required by subparagraph (A) shall—

(i) specify any changes in law that will be necessary to implement the system proposed under subparagraph (A)(i), and

(ii) describe the type of system that will be implemented under paragraph (2) in the absence of such changes.

(2) Not later than December 31, 1988, the Secretary shall promulgate final regulations providing for the implementation of—

(A) the system proposed under paragraph (1)(A)(i), or

(B) if the changes in law specified pursuant to paragraph (1)(B)(i) have not been enacted, the system described in paragraph (1)(B)(ii).

Such regulations shall provide for the full implementation of the system not later than October 1, 1991.

(c) Any data collection system developed and implemented under this section shall—

(1) avoid unnecessary diversion of resources from agencies responsible for adoption and foster care;

(2) assure that any data that is collected is reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies;

(3) provide comprehensive national information with respect to—

(A) the demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents,

(B) the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care),

(C) the number and characteristics of—

(i) children placed in or removed from foster care,

(ii) children adopted or with respect to whom adoptions have been terminated, and

(iii) children placed in foster care outside the State which has placement and care responsibility, and

(D) the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided; and

(4) utilize appropriate requirements and incentives to ensure that the system functions reliably throughout the United States.

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[<sup>309</sup>] See Vol. II, P.L. 99-509, §9442, with respect to the maternal and child health and adoption clearinghouse.

[<sup>310</sup>] October 21, 1986. [P.L. 99-509, §9443; 100 Stat. 2073]

#### **ANNUAL REPORT**

Sec. 479A. [42 U.S.C. 679b] The Secretary, in consultation with Governors, State legislatures, State and local public officials responsible for administering child welfare programs, and child welfare advocates, shall—

- (1) develop a set of outcome measures (including length of stay in foster care, number of foster care placements, and number of adoptions) that can be used to assess the performance of States in operating child protection and child welfare programs pursuant to parts B and E to ensure the safety of children;
- (2) to the maximum extent possible, the outcome measures should be developed from data available from the Adoption and Foster Care Analysis and Reporting System;
- (3) develop a system for rating the performance of States with respect to the outcome measures, and provide to the States an explanation of the rating system and how scores are determined under the rating system;
- (4) prescribe such regulations as may be necessary to ensure that States provide to the Secretary the data necessary to determine State performance with respect to each outcome measure, as a condition of the State receiving funds under this part;
- (5) on May 1, 1999, and annually thereafter, prepare and submit to the Congress a report on the performance of each State on each outcome measure, which shall examine the reasons for high performance and low performance and, where possible, make recommendations as to how State performance could be improved; and
- (6) include in the report submitted pursuant to paragraph (5) for fiscal year 2007 or any succeeding fiscal year, State-by-State data on—
- (A) the percentage of children in foster care under the responsibility of the State who were visited on a monthly basis by the caseworker handling the case of the child; and
- (B)<sup>[311]</sup> the total number of visits made by caseworkers on a monthly basis to children in foster care under the responsibility of the State during a fiscal year as a percentage of the total number of the visits that would occur during the fiscal year if each child were so visited once every month while in such care; and
- (C)<sup>[312]</sup> the percentage of the visits that occurred in the residence of the child.

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<sup>[311]</sup> P.L. 112-34, §106(d)(2), inserted new subparagraph (B), effective September 30, 2011.

<sup>[312]</sup> P.L. 112-34, §106(d)(2), redesignated the former subparagraph (B) as subparagraph (C). For the general effective date [October 1, 2011] and the delay permitted if State legislation is required, see Vol. II, P.L. 112-34, §107.

#### **PROGRAMS OPERATED BY INDIAN TRIBAL ORGANIZATIONS<sup>[313]</sup>**

Sec. 479B. [42 U.S.C. 679c] (a) Definitions of Indian Tribe; Tribal Organizations.—In this section, the terms “Indian tribe” and “tribal organization” have the meanings given those terms in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(b) Authority.— Except as otherwise provided in this section, this part shall apply in the same manner as this part applies to a State to an Indian tribe, tribal organization, or tribal consortium that elects to operate a program under this part and has a plan approved by the Secretary under section [471](#) in accordance with this section.

(c) Plan Requirements.—

(1) In general.—An Indian tribe, tribal organization, or tribal consortium that elects to operate a program under this part shall include with its plan submitted under section [471](#) the following:

(A) Financial management.—Evidence demonstrating that the tribe, organization, or consortium has not had any uncorrected significant or material audit exceptions under Federal grants or contracts that directly relate to the administration of social services for the 3-year period prior to the date on which the plan is submitted.

(B) Service areas and populations.—For purposes of complying with section [471\(a\)\(3\)](#), a description of the service area or areas and populations to be served under the plan and an assurance that the plan shall be in effect in all service area or areas and for all populations served by the tribe, organization, or consortium.

(C) Eligibility.—

(i) In general.—Subject to clause (ii) of this subparagraph, an assurance that the plan will provide—

(I) foster care maintenance payments under section [472](#) only on behalf of children who satisfy the eligibility requirements of section [472\(a\)](#);

(II) adoption assistance payments under section [473](#) pursuant to adoption assistance agreements only on behalf of children who satisfy the eligibility requirements for such payments under that section; and

(III) at the option of the tribe, organization, or consortium, kinship guardianship assistance payments in accordance with section [473\(d\)](#) only on behalf of children who meet the requirements of section [473\(d\)\(3\)](#).

(ii) Satisfaction of foster care eligibility requirements.—For purposes of determining whether a child whose placement and care are the responsibility of an Indian tribe, tribal organization, or tribal consortium with a plan approved under section [471](#) in accordance with this section satisfies the requirements of section [472\(a\)](#), the following shall apply:

(I) Use of affidavits, etc.—Only with respect to the first 12 months for which such plan is in effect, the requirement in paragraph (1) of section [472\(a\)](#) shall not be interpreted so as to prohibit the use of affidavits or nunc pro tunc orders as verification documents in support of the reasonable efforts and contrary to the welfare of the child judicial determinations required under that paragraph.

(II) AFDC eligibility requirement.—The State plan approved under section [402](#) (as in effect on July 16, 1996) of the State in which the child resides at the time of removal from the home shall apply to the determination of whether the child satisfies section [472\(a\)\(3\)](#).

(D) Option to claim in-kind expenditures from third-party sources for non-federal share of administrative and training costs during initial implementation period.—Only for fiscal year quarters beginning after September 30, 2009, and before October 1, 2014, a list of the in-kind expenditures (which shall be fairly evaluated, and may include plants, equipment, administration, or services) and the third-party sources of such expenditures that the tribe, organization, or consortium may claim as part of the non-Federal share of administrative or training expenditures attributable to such quarters for purposes of receiving payments under section [474\(a\)\(3\)](#). The Secretary shall permit a tribe, organization, or consortium to claim in-kind expenditures from third party sources for such purposes during such quarters subject to the following:

(i) No effect on authority for tribes, organizations, or consortia to claim expenditures or indirect costs to the same extent as states.—Nothing in this subparagraph shall be construed as preventing a tribe, organization, or consortium from claiming any expenditures or indirect costs for purposes of receiving payments under section [474\(a\)](#) that a State with a plan approved under section [471\(a\)](#) could claim for such purposes.

(ii) Fiscal year 2010 or 2011.—

(I) Expenditures other than for training.—With respect to amounts expended during a fiscal year quarter beginning after September 30, 2009, and before October 1, 2011, for which the tribe, organization, or consortium is eligible for payments under subparagraph (C), (D), or (E) of section [474\(a\)\(3\)](#), not more than 25 percent of such amounts may consist of in-kind expenditures from third-party sources specified in the list required under this subparagraph to be submitted with the plan.

(II) Training expenditures.—With respect to amounts expended during a fiscal year quarter beginning after September 30, 2009, and before October 1, 2011, for which the tribe, organization, or consortium is eligible for payments under subparagraph (A) or (B) of section [474\(a\)\(3\)](#), not more than 12 percent of such amounts may consist of in-kind expenditures from third-party sources that are specified in such list and described in subclause (III).

(III) Sources described.—For purposes of subclause (II), the sources described in this subclause are the following:

(aa) A State or local government.

(bb) An Indian tribe, tribal organization, or tribal consortium other than the tribe, organization, or consortium submitting the plan.

(cc) A public institution of higher education.

(dd) A Tribal College or University (as defined in section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c)).

(ee) A private charitable organization.

(iii) Fiscal year 2012, 2013, or 2014.—

(I) In general.—Except as provided in subclause (II) of this clause and clause (v) of this subparagraph, with respect to amounts expended during any fiscal year quarter beginning after September 30, 2011, and before October 1, 2014, for which the tribe, organization, or consortium is eligible for payments under any subparagraph of section [474\(a\)\(3\)](#) of this Act, the only in-kind expenditures from third-party sources that may be claimed by the tribe, organization, or consortium for purposes of determining the non-Federal share of such expenditures (without regard to whether the expenditures are specified on the list required under this subparagraph to be submitted with the plan) are in-kind expenditures that are specified in regulations promulgated by the Secretary under section 301(e)(2) of the Fostering Connections to Success and Increasing Adoptions Act of 2008 and are from an applicable third-party source specified in such regulations, and do not exceed the applicable percentage for claiming such in-kind expenditures specified in the regulations.

(II) Transition period for early approved tribes, organizations, or consortia.—Subject to clause (v), if the tribe, organization, or consortium is an early approved tribe, organization, or consortium (as defined in subclause (III) of this clause), the Secretary shall not require the tribe, organization, or consortium to comply with such regulations before October 1, 2013. Until the earlier of the date such tribe, organization, or consortium comes into compliance with such regulations or October 1, 2013, the limitations on the claiming of in-kind expenditures from third-party sources under clause (ii) shall continue to apply to such tribe, organization, or consortium (without regard to fiscal limitation) for purposes of determining the non-Federal share of amounts expended by the tribe, organization, or consortium during any fiscal year quarter that begins after September 30, 2011, and before such date of compliance or October 1, 2013, whichever is earlier.

(III) Definition of early approved tribe, organization, or consortium.—For purposes of subclause (II) of this clause, the term “early approved tribe, organization, or consortium” means an Indian tribe, tribal organization, or tribal consortium that had a plan approved under section [471](#) in accordance with this section for any quarter of fiscal year 2010 or 2011.

(iv) Fiscal year 2015 and thereafter.—Subject to clause (v) of this subparagraph, with respect to amounts expended during any fiscal year quarter beginning after September 30, 2014, for which the tribe, organization, or consortium is eligible for payments under any subparagraph of section [474\(a\)\(3\)](#) of this Act, in-kind expenditures from third-party sources may be claimed for purposes of determining the non-Federal share of expenditures under any subparagraph of such section [474\(a\)\(3\)](#) only in accordance with the regulations promulgated by the Secretary under section 301(e)(2) of the Fostering Connections to Success and Increasing Adoptions Act of 2008.

(v) Definition of early approved tribe, organization, or consortium.—For purposes of subclause (II) of this clause, the term “early approved tribe, organization, or consortium” means an Indian tribe, tribal organization, or tribal consortium that had a plan approved under section [471](#) in accordance with this section for any quarter of fiscal year 2010 or 2011.

(I) in the case of any quarter of fiscal year 2012, 2013, or 2014, the limitations on claiming in-kind expenditures from third-party sources under clause (ii) of this subparagraph shall apply (without regard to fiscal limitation) for purposes of determining the non-Federal share of such expenditures; and

(II) in the case of any quarter of fiscal year 2015 or any fiscal year thereafter, no tribe, organization, or consortium may claim in-kind expenditures from third-party sources for purposes of determining the non-Federal share of such expenditures if a State with a plan approved under section [471\(a\)](#) of this Act could not claim in-kind expenditures from third-party sources for such purposes.

(2) Clarification of tribal authority to establish standards for tribal foster family homes and tribal child care institutions.—For purposes of complying with section [471\(a\)\(10\)](#), an Indian tribe, tribal organization, or tribal consortium shall establish and maintain a tribal authority or authorities which shall be responsible for establishing and maintaining tribal standards for tribal foster family homes and tribal child care institutions.

(3) Consortium.—The participating Indian tribes or tribal organizations of a tribal consortium may develop and submit a single plan under section [471](#) that meets the requirements of this section.

(d) Determination of Federal Medical Assistance Percentage for Foster Care Maintenance and Adoption Assistance Payments.—

(1) Per capita income.—For purposes of determining the Federal medical assistance percentage applicable to an Indian tribe, a tribal organization, or a tribal consortium under paragraphs (1), (2), and (5) of section [474\(a\)](#), the calculation of the per capita income of the Indian tribe, tribal organization, or tribal consortium shall be based upon the service population of the Indian tribe, tribal organization, or tribal consortium, except that in no case shall an Indian tribe, a tribal organization, or a tribal consortium receive less than the Federal medical assistance percentage for any State in which the tribe, organization, or consortium is located.

(2) Consideration of other information.—Before making a calculation under paragraph (1), the Secretary shall consider any information submitted by an Indian tribe, a tribal organization, or a tribal consortium that the Indian tribe, tribal organization, or tribal consortium considers relevant to making the calculation of the per capita income of the Indian tribe, tribal organization, or tribal consortium.

(e) Nonapplication to Cooperative Agreements and Contracts.—Any cooperative agreement or contract entered into between an Indian tribe, a tribal organization, or a tribal consortium and a State for the administration or payment of funds under this part that is in effect as of the date of enactment of this section shall remain in full force and effect, subject to the right of either party to the agreement or contract to revoke or modify the agreement or contract pursuant to the terms of the agreement or contract. Nothing in this section shall be construed as affecting the authority for an Indian tribe, a tribal organization, or a tribal consortium and a State to enter into a cooperative agreement or contract for the administration or payment of funds under this part.

(f) John H. Chafee Foster Care Independence Program.—Except as provided in section [477\(j\)](#), subsection (b) of this section shall not apply with respect to the John H. Chafee Foster Care Independence Program established under section [477](#) (or with respect to payments made under section [474\(a\)\(4\)](#) or grants made under section [474\(e\)](#)).

(g) Rule of Construction.—Nothing in this section shall be construed as affecting the application of section [472\(h\)](#) to a child on whose behalf payments are paid under section [472](#), or the application of section [473\(b\)](#) to a child on whose behalf payments are made under section [473](#) pursuant to an adoption assistance agreement or a kinship guardianship assistance agreement, by an Indian tribe, tribal organization, or tribal consortium that elects to operate a foster care and adoption assistance program in accordance with this section.

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[§131] P.L. 110-351, §301(a), added §479B, effective October 1, 2009, without regard to whether the regulations required under §301(e)(1) have been promulgated by such date.

See Vol. II, P.L. 110-351, §301(d), with respect to rules of construction and §301(e), with respect to regulations.

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# Title 45: Public Welfare

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## PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV-E

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AUTHORITY: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

### § 1356.10 Scope.

This part applies to title IV-E agency programs for foster care maintenance payments, adoption assistance payments, related foster care and adoption administrative and training expenditures, and the independent living services program under title IV-E of the Act.

[77 FR 946, Jan. 6, 2012]

### § 1356.20 Title IV-E plan document and submission requirements.

(a) To be in compliance with the title IV-E plan requirements and to be eligible to receive Federal financial participation (FFP) in the costs of foster care maintenance payments and adoption assistance under this part, a title IV-E agency must have a plan approved by the Secretary that meets the requirements of this part, part 1355, section 471(a) of the Act and for Tribal title IV-E agencies, section 479B(c) of the Act. The title IV-E plan must be submitted to the appropriate Regional Office, ACYF, in a form determined by the title IV-E agency.

(b) Failure by a title IV-E agency to comply with the requirements and standards for the data reporting system for foster care and adoption (§ 1355.40 of this chapter) shall be considered a substantial failure by the title IV-E agency in complying with the plan.

(c) The following procedures for approval of plans and amendments apply to the title IV-E program:

(1) *Plan.* The plan consists of written documents furnished by the title IV-E agency to cover its program under part E of title IV. After approval of the original plan by the Commissioner, ACYF, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that ACYF may determine whether the plan continues to meet Federal requirements and policies.

(2) *Submittal.* Plans and revisions of the plans are submitted first to the State governor or his/her designee, or the Tribal leader or his/her designee for review and then to the regional office, ACYF. Title IV-E agencies are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(3) *Review.* Staff in the regional offices are responsible for review of plans and amendments. They also initiate discussion with the title IV-E agency on clarification of significant aspects of the plan which come to their attention in the course of this review. Plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the title IV-E agency.

(4) *Action.* ACYF has the authority to approve plans and amendments thereto which provide for the administration of foster care maintenance payments and adoption assistance programs under section 471 of the Act. The Commissioner, ACYF, retains the authority to determine that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval. The Regional Office, ACYF, formally notifies the title IV-E agency of the actions taken on plans or revisions.

(5) *Basis for approval.* Determinations as to whether plans (including plan amendments and administrative practice under the plans) originally meet or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations.

(6) *Prompt approval of plans.* The determination as to whether a plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 45th day following the date on which the plan submittal is received in the regional office, unless the Regional Office, ACYF, has secured from the title IV-E agency a written agreement to extend that period.

(7) *Prompt approval of plan amendments.* Any amendment of an approved plan may, at the option of the title IV-E agency, be considered as a submission of a new plan. If the title IV-E agency requests that such amendment be so considered, the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 45th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Office, ACYF, has secured from the title IV-E agency a written agreement to extend that period. In absence of request by a title IV-E agency that an amendment of an approved plan shall be considered as a submission of a new plan, the procedures under § 201.6(a) and (b) shall be applicable.

(8) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide basis or, in the case of a Tribal title IV-E agency, in operation in the Tribal title IV-E agency's entire service area. The same applies with respect to plan amendments.

(d) Once the title IV-E plan has been submitted and approved, it shall remain in effect until amendments are required. An amendment is required if there is any significant and relevant change in the information or assurances in the plan, or the organization, policies or operations described in the plan.

[77 FR 946, Jan. 6, 2012]

## **§ 1356.21 Foster care maintenance payments program implementation requirements.**

(a) *Statutory and regulatory requirements of the Federal foster care program.* To implement the foster care maintenance payments program provisions of the title IV-E plan and to be eligible to receive Federal financial participation (FFP) for foster care maintenance payments under this part, a title IV-E agency must meet the requirements of this section, 45 CFR 1356.22, 45 CFR 1356.30, and sections 472, 475(1), 475(4), 475(5), 475(6), and for a Tribal title IV-E agency section 479(B)(c)(1)(C)(ii)(II) of the Act.

(b) *Reasonable efforts.* The title IV-E agency must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In order to satisfy the "reasonable efforts" requirements of section 471(a)(15) (as implemented through section 472(a)(2) of the Act), the title IV-E agency must meet the requirements of paragraphs

(b) and (d) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the paramount concern.

(1) *Judicial determination of reasonable efforts to prevent a child's removal from the home.* (i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

(2) *Judicial determination of reasonable efforts to finalize a permanency plan.* (i) The title IV-E agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

(ii) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the schedule prescribed in paragraph (b)(2)(i) of this section, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.

(3) *Circumstances in which reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family.* Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the title IV-E agency obtains a judicial determination that such efforts are not required because:

(i) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State, or for a Tribal title IV-E agency, Tribal law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) A court of competent jurisdiction has determined that the parent has been convicted of:

(A) Murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(B) Voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or

(D) A felony assault that results in serious bodily injury to the child or another child of the parent; or,

(iii) The parental rights of the parent with respect to a sibling have been terminated involuntarily.

(4) *Concurrent planning.* Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family.

(5) *Use of the Federal Parent Locator Service.* The State agency may seek the services of the Federal Parent Locator Service to search for absent parents at any point in order to facilitate a permanency plan.

(c) *Contrary to the welfare determination.* Under section 472(a)(2) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or

that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.

(d) *Documentation of judicial determinations.* The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

(1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations except for a Tribal title IV-E agency for the first 12 months that agency's title IV-E plan is in effect as provided for in section 479B(c)(1)(C)(ii)(I) of the Act.

(3) Court orders that reference State or Tribal law to substantiate judicial determinations are not acceptable, even if such law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

(e) *Trial home visits.* A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

(f) *Case review system.* In order to satisfy the provisions of section 471(a)(16) of the Act regarding a case review system, each title IV-E agency's case review system must meet the requirements of sections 475(5) and 475(6) of the Act.

(g) *Case plan requirements.* In order to satisfy the case plan requirements of sections 471(a)(16), 475(1) and 475(5)(A) and (D) of the Act, the title IV-E agency must promulgate policy materials and instructions for use by staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child must:

(1) Be a written document, which is a discrete part of the case record, in a format determined by the title IV-E agency, which is developed jointly with the parent(s) or guardian of the child in foster care; and

(2) Be developed within a reasonable period, to be established by the title IV-E agency, but in no event later than 60 days from the child's removal from the home pursuant to paragraph (k) of this section;

(3) Include a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent with the best interests and special needs of the child. (FFP is not available when a court orders a placement with a specific foster care provider);

(4) Include a description of the services offered and provided to prevent removal of the child from the home and to reunify the family; and

(5) Document the steps to finalize a placement when the case plan goal is or becomes adoption or placement in another permanent home in accordance with sections 475(1)(E) and (5)(E) of the Act. When the case plan goal is adoption, at a minimum, such documentation shall include child-specific recruitment efforts such as the use of State, Tribal, regional, and national adoption exchanges including electronic exchange systems.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0140. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

(h) *Application of the permanency hearing requirements.* (1) To meet the requirements of the permanency hearing, the title IV-E agency must, among other requirements, comply with section 475(5)(C) of the Act.

(2) In accordance with paragraph (b)(3) of this section, when a court determines that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify the child and family are not required.

(3) If the title IV-E agency concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the title IV-E agency must document to the court the compelling reason for the alternate plan. Examples of a compelling reason for establishing such a permanency plan may include:

(i) The case of an older teen who specifically requests that emancipation be established as his/her permanency plan;

(ii) The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and the child's foster parents have committed to raising him/her to the age of majority and to facilitate visitation with the disabled parent; or,

(iii) the Tribe has identified another planned permanent living arrangement for the child.

(4) When an administrative body, appointed or approved by the court, conducts the permanency hearing, the procedural safeguards set forth in the definition of *permanency hearing* must be so extended by the administrative body.

(i) *Application of the requirements for filing a petition to terminate parental rights at section 475(5)(E) of the Social Security Act.* (1) Subject to the exceptions in paragraph (i)(2) of this section, the title IV-E agency must file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):

(i) Whose child has been in foster care under the responsibility of the title IV-E agency for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth month in foster care. In calculating when to file a petition for termination of parental rights, the title IV-E agency:

(A) Must calculate the 15 out of the most recent 22 month period from the date the child is considered to have entered foster care as defined at section 475(5)(F) of the Act and § 1355.20 of this part;

(B) Must use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period;

(C) Must not include trial home visits or runaway episodes in calculating 15 months in foster care; and,

(D) Need only apply section 475(5)(E) of the Act to a child once if the title IV-E agency does not file a petition because one of the exceptions at paragraph (i)(2) of this section applies;

(ii) Whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under State or for a Tribal title IV-E agency, Tribal law). The petition to terminate parental rights must be filed within 60 days of the judicial determination that the child is an abandoned infant; or,

(iii) Who has been convicted of one of the felonies listed at paragraph (b)(3)(ii) of this section. Under such circumstances, the petition to terminate parental rights must be filed within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.

(2) The title IV-E agency may elect not to file or join a petition to terminate the parental rights of a parent per paragraph (i)(1) of this section if:

(i) At the option of the title IV-E agency, the child is being cared for by a relative;

(ii) The title IV-E agency has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the individual child. Compelling reasons for not filing a petition to terminate parental rights include, but are not limited to:

- (A) Adoption is not the appropriate permanency goal for the child; or,
  - (B) No grounds to file a petition to terminate parental rights exist; or,
  - (C) The child is an unaccompanied refugee minor as defined in 45 CFR 400.111; or
  - (D) There are international legal obligations or compelling foreign policy reasons that would preclude terminating parental rights; or
- (iii) The title IV-E agency has not provided to the family, consistent with the time period in the case plan, services that the title IV-E agency deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

(3) When the title IV-E agency files or joins a petition to terminate parental rights in accordance with paragraph (i)(1) of this section, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child.

(j) *Child of a minor parent in foster care.* Foster care maintenance payments made on behalf of a child placed in a foster family home or child care institution, who is the parent of a son or daughter in the same home or institution, must include amounts which are necessary to cover costs incurred on behalf of the child's son or daughter. Said costs must be limited to funds expended on items listed in the definition of *foster care maintenance payments* in § 1355.20 of this part.

(k) *Removal from the home of a specified relative.* (1) For the purposes of meeting the requirements of section 472(a)(1) of the Act, a removal from the home must occur pursuant to:

(i) A voluntary placement agreement entered into by a parent or guardian which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or

(ii) A judicial order for a physical or constructive removal of the child from a parent or specified relative.

(2) A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the title IV-E agency.

(3) A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties.

(l) *Living with a specified relative.* For purposes of meeting the requirements for living with a specified relative prior to removal from the home under section 472(a)(1) of the Act, all of the conditions under section 472(a)(3), and for Tribal title IV-E agencies section 479B(c)(1)(C)(ii)(II) of the Act, one of the two following situations must apply:

(1) The child was living with the parent or specified relative, and was AFDC eligible in that home in the month of the voluntary placement agreement or initiation of court proceedings; or

(2) The child had been living with the parent or specified relative within six months of the month of the voluntary placement agreement or the initiation of court proceedings, and the child would have been AFDC eligible in that month if s/he had still been living in that home.

(m) *Review of payments and licensing standards.* In meeting the requirements of section 471(a)(11) of the Act, the title IV-E agency must review at reasonable, specific, time-limited periods to be established by the agency:

(1) The amount of the payments made for foster care maintenance and adoption assistance to assure their continued appropriateness; and

(2) The licensing or approval standards for child care institutions and foster family homes.

(n) *Foster care goals.* The specific foster care goals required under section 471(a)(14) of the Act must be incorporated into State law or Tribal law by statute, code, resolution, Tribal proceedings or administrative regulation with the force of law.

(o) *Notice and right to be heard.* The title IV-E agency must provide the foster parent(s) of a child and any preadoptive parent or relative providing care for the child with timely notice of and the opportunity to be heard in any proceedings held with respect to the child during the time the child is in the care of such foster parent, preadoptive parent, or relative caregiver. Notice of and opportunity to be heard does not include the right to standing as a party to the case.

[65 FR 4088, Jan. 25, 2000, as amended at 66 FR 58677, Nov. 23, 2001; 77 FR 947, Jan. 6, 2012]

#### **§ 1356.22 Implementation requirements for children voluntarily placed in foster care.**

(a) As a condition of receipt of Federal financial participation (FFP) in foster care maintenance payments for a dependent child removed from his home under a voluntary placement agreement, the title IV-E agency must meet the requirements of:

- (1) Section 472 of the Act, as amended;
- (2) Sections 422(b)(8) and 475(5) of the Act;
- (3) 45 CFR 1356.21(e), (f), (g), (h), and (i); and
- (4) The requirements of this section.

(b) Federal financial participation is available only for voluntary foster care maintenance expenditures made within the first 180 days of the child's placement in foster care unless there has been a judicial determination by a court of competent jurisdiction, within the first 180 days of such placement, to the effect that the continued voluntary placement is in the best interests of the child.

(c) The title IV-E agency must establish and maintain a uniform procedure or system, consistent with State or Tribal law, for revocation by the parent(s) of a voluntary placement agreement and return of the child.

[65 FR 4090, Jan. 25, 2000, as amended at 66 FR 58677, Nov. 23, 2001; 77 FR 949, Jan. 6, 2012]

#### **§ 1356.30 Safety requirements for foster care and adoptive home providers.**

(a) The title IV-E agency must provide documentation that criminal records checks have been conducted with respect to prospective foster and adoptive parents.

(b) The title IV-E agency may not approve or license any prospective foster or adoptive parent, nor may the title IV-E agency claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the title IV-E agency finds that, based on a criminal records check conducted in accordance with paragraph (a) of this section, a court of competent jurisdiction has determined that the prospective foster or adoptive parent has been convicted of a felony involving:

- (1) Child abuse or neglect;
- (2) Spousal abuse;
- (3) A crime against a child or children (including child pornography); or,
- (4) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

(c) The title IV-E agency may not approve or license any prospective foster or adoptive parent, nor may the title IV-E agency claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the title IV-E agency finds, based on a criminal records check conducted in accordance with paragraph (a) of this section, that a court of competent jurisdiction has determined that the prospective foster or adoptive parent has, within the last five years, been convicted of a felony involving:

- (1) Physical assault;
- (2) Battery; or,
- (3) A drug-related offense.

(d) [Reserved]

(e) In all cases where the State opted out of the criminal records check requirement, as permitted prior to the amendments made by section 152 of Public Law 109-248, the licensing file for that foster or adoptive family must contain documentation which verifies that safety considerations with respect to the caretaker(s) have been addressed.

(f) In order for a child care institution to be eligible for title IV-E funding, the licensing file for the institution must contain documentation which verifies that safety considerations with respect to the staff of the institution have been addressed.

[65 FR 4090, Jan. 25, 2000, as amended at 77 FR 949, Jan. 6, 2012]

**§ 1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.**

(a) To implement the adoption assistance program provisions of the title IV-E plan and to be eligible for Federal financial participation in adoption assistance payments under this part, the title IV-E agency must meet the requirements of this section and section 471(a), applicable provisions of section 473, and section 475(3) of the Act.

(b) The adoption assistance agreement for payments pursuant to section 473(a)(2) must meet the requirements of section 475(3) of the Act and must:

(1) Be signed and in effect at the time of or prior to the final decree of adoption. A copy of the signed agreement must be given to each party; and

(2) Specify its duration; and

(3) Specify the nature and amount of any payment, services and assistance to be provided under such agreement and, for purposes of eligibility under title XIX of the Act, specify that the child is eligible for Medicaid services; and

(4) Specify, with respect to agreements entered into on or after October 1, 1983, that the agreement shall remain in effect regardless of the place of residence of the adoptive parents at any given time.

(c) There must be no income eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance payments.

(d) In the event an adoptive family moves from one place of residence to another, the family may apply for social services on behalf of the adoptive child in the new place of residence. If a needed service(s) specified in the adoption assistance agreement is not available in the new place of residence, the title IV-E agency making the original adoption assistance payment remains financially responsible for providing the specified service(s).

(e) A title IV-E agency may make an adoption assistance agreement with adopting parent(s) who reside in another State or a Tribal service area. If so, all provisions of this section apply.

(f) The title IV-E agency must actively seek ways to promote the adoption assistance program.

[48 FR 23116, May 23, 1983, as amended at 53 FR 50220, Dec. 14, 1988; 77 FR 949, Jan. 6, 2012]

**§ 1356.41 Nonrecurring expenses of adoption.**

(a) The amount of the payment made for nonrecurring expenses of adoption shall be determined through agreement between the adopting parent(s) and the title IV-E agency administering the program. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

(b) The agreement for nonrecurring expenses may be a separate document or a part of an agreement for either State, Tribal, or Federal adoption assistance payments or services.

(c) There must be no income eligibility requirement (means test) for adopting parents in determining whether payments for nonrecurring expenses of adoption shall be made. However, parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

(d) For purposes of payment of nonrecurring expenses of adoption, the title IV-E agency must determine that the child is a "child with special needs" as defined in section 473(c) of the Act, and that the child has been placed for adoption in accordance with applicable laws; the child need not meet the categorical eligibility requirements at section 473(a)(2).

(e)(1) The title IV-E agency must notify all appropriate courts and all public and licensed private nonprofit adoption agencies of the availability of funds for the nonrecurring expenses of adoption of children with special needs as well as where and how interested persons may apply for these funds. This information should routinely be made available to all persons who inquire about adoption services.

(2) The agreement for nonrecurring expenses must be signed at the time of or prior to the final decree of adoption. Claims must be filed with the title IV-E agency within two years of the date of the final decree of adoption.

(f)(1) Funds expended by the title IV-E agency under an adoption assistance agreement, with respect to nonrecurring adoption expenses incurred by or on behalf of parents who adopt a child with special needs, shall be considered an administrative expenditure of the title IV-E Adoption Assistance Program. Federal reimbursement is available at a 50 percent matching rate, for title IV-E agency expenditures up to \$2,000, for any adoptive placement.

(2) Title IV-E agencies may set a reasonable lower maximum which must be based on reasonable charges, consistent with State, Tribal, and local practices, for special needs adoptions within the State or Tribal service area. The basis for setting a lower maximum must be documented and available for public inspection.

(3) In cases where siblings are placed and adopted, either separately or as a unit, each child is treated as an individual with separate reimbursement for nonrecurring expenses up to the maximum amount allowable for each child.

(g) Federal financial participation for nonrecurring expenses of adoption is limited to costs incurred by or on behalf of adoptive parents that are not otherwise reimbursed from other sources. Payments for nonrecurring expenses shall be made either directly by the title IV-E agency or through another public or licensed nonprofit private agency.

(h) When the adoption of the child involves a placement outside the State or Tribal service area, the title IV-E agency that enters into an adoption assistance agreement under section 473(a)(1)(B)(ii) of the Act or under a State or Tribal subsidy program will be responsible for paying the nonrecurring adoption expenses of the child. In cases where there is placement outside the State or Tribal service area but no agreement for other Federal, Tribal, or State adoption assistance, the title IV-E agency in the jurisdiction in which the final adoption decree is issued will be responsible for reimbursement of nonrecurring expenses if the child meets the requirements of section 473(c).

(i) The term "nonrecurring adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State, Tribal or Federal law, and which have not been reimbursed from other sources or other funds. "Other expenses which are directly related to the legal adoption of a child with special needs" means the costs of the adoption incurred by or on behalf of the parents and for which parents carry the ultimate liability for

payment. Such costs may include the adoption study, including health and psychological examination, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the placement or adoption process.

(j) Failure to honor all eligible claims will be considered non-compliance by the title IV-E agency with title IV-E of the Act.

(k) A title IV-E expenditure is considered made in the quarter during which the payment was made by a title IV-E agency to a private nonprofit agency, individual or vendor payee.

[53 FR 50220, Dec. 14, 1988, as amended at 77 FR 949, Jan. 6, 2012]

#### **§ 1356.50 Withholding of funds for non-compliance with the approved title IV-E plan.**

(a) To be in compliance with the title IV-E plan requirements, a title IV-E agency must meet the requirements of the Act and 45 CFR 1356.20, 1356.21, 1356.30, and 1356.40 of this part.

(b) To be in compliance with the title IV-E plan requirements, a title IV-E agency that chooses to claim FFP for voluntary placements must meet the requirements of the Act, 45 CFR 1356.22 and paragraph (a) of this section; and

(c) For purposes of this section, the procedures in § 1355.39 of this chapter apply.

[48 FR 23117, May 23, 1983, as amended at 65 FR 4091, Jan. 25, 2000; 66 FR 58677, Nov. 23, 2001; 77 FR 950, Jan. 6, 2012]

#### **§ 1356.60 Fiscal requirements (title IV-E).**

(a) *Federal matching funds for foster care maintenance and adoption assistance payments.* (1) Effective October 1, 1980, Federal financial participation (FFP) is available to States under an approved title IV-E State plan for allowable costs in expenditures for:

(1) Federal financial participation (FFP) is available to title IV-E agencies under an approved title IV-E plan for allowable costs in expenditures for:

(i) Foster care maintenance payments as defined in section 475(4) of the Act, made in accordance with 45 CFR 1356.20 through 1356.30, section 472 of the Act, and for a Tribal title IV-E agency, section 479B of the Act;

(ii) Adoption assistance payments made in accordance with 45 CFR 1356.20 and 1356.40, applicable provisions of section 473, section 475(3) and, for a Tribal title IV-E agency, section 479B of the Act.

(2) Federal financial participation is available at the rate of the Federal medical assistance percentage as defined in section 1905(b), 474(a)(1) and (2) and 479B(d) of the Act as applicable, definitions, and pertinent regulations as promulgated by the Secretary, or his designee.

(b) *Federal matching funds for title IV-E agency training for foster care and adoption assistance under title IV-E.* (1) Federal financial participation is available at the rate of seventy-five percent (75%) in the costs of:

(i) Training personnel employed or preparing for employment by the title IV-E agency administering the plan, and;

(ii) Providing short-term training (including travel and per diem expenses) to current or prospective foster or adoptive parents and the members of the state licensed or approved child care institutions providing care to foster and adopted children receiving title IV-E assistance.

(2) All training activities and costs funded under title IV-E shall be included in the agency's training plan for title IV-B.

(3) Short and long term training at educational institutions and in-service training may be provided in accordance with the provisions of §§ 235.63 through 235.66(a) of this title.

(c) *Federal matching funds for other title IV-E agency administrative expenditures for foster care and adoption assistance under title IV-E.* Federal financial participation is available at the rate of fifty percent (50%) for administrative expenditures necessary for the proper and efficient administration of the title IV-E plan. The State's cost allocation plan shall identify which costs are allocated and claimed under this program.

(1) The determination and redetermination of eligibility, fair hearings and appeals, rate setting and other costs directly related only to the administration of the foster care program under this part are deemed allowable administrative costs under this paragraph. They may not be claimed under any other section or Federal program.

(2) The following are examples of allowable administrative costs necessary for the administration of the foster care program:

- (i) Referral to services;
- (ii) Preparation for and participation in judicial determinations;
- (iii) Placement of the child;
- (iv) Development of the case plan;
- (v) Case reviews;
- (vi) Case management and supervision;
- (vii) Recruitment and licensing of foster homes and institutions;
- (viii) Rate setting; and
- (ix) A proportionate share of related agency overhead.
- (x) Costs related to data collection and reporting.

(3) Allowable administrative costs do not include the costs of social services provided to the child, the child's family or foster family which provide counseling or treatment to ameliorate or remedy personal problems, behaviors or home conditions.

(d) *Cost of the data collection system.* (1) Costs related to data collection system initiation, implementation and operation may be charged as an administrative cost of title IV-E at the 50 percent matching rate subject to the restrictions in paragraph (d) (2) of this section

(2) For information systems used for purposes other than those specified by section 479 of the Act, costs must be allocated and must bear the same ratio as the foster care and adoption population bears to the total population contained in the information system as verified by reports from all other programs included in the system.

(e) *Federal matching funds for SACWIS/TACWIS.* All expenditures of a title IV-E agency to plan, design, develop, install and operate the Statewide or Tribal automated child welfare information system approved under § 1355.52 of this chapter, shall be treated as necessary for the proper and efficient administration of the title IV-E plan without regard to whether the system may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance or adoption assistance payments may be made under this part.

[47 FR 30925, July 15, 1982, as amended at 48 FR 23117, May 23, 1983; 53 FR 50221, Dec. 14, 1988; 58 FR 67938, 67947, Dec. 22, 1993; 65 FR 4091, Jan. 25, 2000; 66 FR 58677, Nov. 23, 2001; 77 FR 950, Jan. 6, 2012]

## **§§ 1356.65-1356.66 [Reserved]**

### **§ 1356.67 Procedures for the transfer of placement and care responsibility of a child from a State to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement.**

(a) Each State with a title IV-E plan approved under section 471 of the Act must establish and maintain procedures, in consultation with Indian Tribes, for the transfer of responsibility for the placement and care of a child under a State title IV-E plan to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement in a way that does not affect a child's eligibility for, or payment of, title IV-E and the child's eligibility for medical assistance under title XIX of the Act.

(b) The procedures must, at a minimum, provide for the State to:

(1) Determine, if the eligibility determination is not already completed, the child's eligibility under section 472 or 473 of the Act at the time of the transfer of placement and care responsibility of a child to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement.

(2) Provide essential documents and information necessary to continue a child's eligibility under title IV-E and Medicaid programs under title XIX to the Tribal title IV-E agency, including, but not limited to providing:

(i) All judicial determinations to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts described in section 471(a)(15) of the Act have been made;

(ii) Other documentation the State has that relates to the child's title IV-E eligibility under sections 472 and 473 of the Act;

(iii) Information and documentation available to the agency regarding the child's eligibility or potential eligibility for other Federal benefits;

(iv) The case plan developed pursuant to section 475(1) of the Act, including health and education records of the child pursuant to section 475(1)(C) of the Act; and

(v) Information and documentation of the child's placement settings, including a copy of the most recent provider's license or approval.

[77 FR 950, Jan. 6, 2012]

**§ 1356.68 Tribal title IV-E agency requirements for in-kind administrative and training contributions from third-party sources.**

(a) *Option to claim in-kind expenditures from third-party sources for non-Federal share of administrative and training costs.* A Tribal title IV-E agency may claim allowable in-kind expenditures from third-party sources for the purpose of determining the non-Federal share of administrative or training costs subject to paragraphs (b) through (d) of this section.

(b) *In-kind expenditures for fiscal years 2010 and 2011* —(1) *Administrative costs.* A Tribal title IV-E agency may claim allowable in-kind expenditures from third-party sources of up to 25 percent of the total administrative funds expended during a fiscal quarter pursuant to section 474(a)(3)(C), (D) or (E) of the Act.

(2) *Training costs.* A Tribal title IV-E agency may claim in-kind training expenditures of up to 12 percent of the total training funds expended during a fiscal year quarter pursuant to section 474(a)(3)(A) and (B) of the Act, but only from the following sources:

(i) A State or local government;

(ii) An Indian Tribe, Tribal organization, or Tribal consortium other than the Indian Tribe, organization, or consortium submitting the title IV-E plan;

(iii) A public institution of higher education;

(iv) A Tribal College or University (as defined in section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c)); and

(v) A private charitable organization.

(c) *In-kind expenditures for fiscal years 2012 and thereafter*—(1) *Administrative costs.* A Tribal title IV-E agency may claim in-kind expenditures from third-party sources of up to 50 percent of the total administrative funds expended during a fiscal quarter pursuant to section 474(a)(3)(C), (D) or (E) of the Act.

(2) *Training costs.* A Tribal title IV-E agency may claim in-kind training expenditures of up to 25 percent (or 30 percent consistent with section 203(b) of Pub. L. 110-351) of the total training funds expended during each quarter of fiscal year 2012 pursuant to section 474(a)(3)(A) and (B) of the Act. For fiscal year 2013 and thereafter, a Tribal title IV-E agency may claim in-kind training expenditures of up to 25 percent of the total training funds expended during a fiscal quarter pursuant to section 474(a)(3)(A) and (B) of the Act.

(3) *Third-party sources.* A Tribal title IV-E agency may claim in-kind training expenditures for training funds from any allowable third-party source.

[77 FR 950, Jan. 6, 2012]

**§§ 1356.69-1356.70 [Reserved]**

**§ 1356.71 Federal review of the eligibility of children in foster care and the eligibility of foster care providers in title IV-E programs.**

(a) *Purpose, scope and overview of the process.* (1) This section sets forth requirements governing Federal reviews of compliance with the title IV-E eligibility provisions as they apply to children and foster care providers under paragraphs (a) and (b) of section 472 of the Act.

(2) The requirements of this section apply to title IV-E agencies that receive Federal payments for foster care under title IV-E of the Act.

(3) The review process begins with a primary review of foster care cases for the title IV-E eligibility requirements.

(i) *Title IV-E agencies in substantial compliance.* Title IV-E agencies determined to be in substantial compliance based on the primary review will be subject to another review in three years.

(ii) *Title IV-E agencies not in substantial compliance.* Title IV-E agencies that are determined not to be in substantial compliance based on the primary review will develop and implement a program improvement plan designed to correct the areas of noncompliance. A secondary review will be conducted after the completion of the program improvement plan. A subsequent primary review will be held three years from the date of the secondary review.

(b) *Composition of review team and preliminary activities preceding an on-site review.* (1) The review team must be composed of representatives of the title IV-E agency, and ACF's Regional and Central Offices.

(2) The title IV-E agency must provide ACF with the complete payment history for each of the sample and oversample cases prior to the on-site review.

(c) *Sampling guidance and conduct of review.* (1) The list of sampling units in the target population (*i.e.*, the sampling frame) will be drawn by ACF statistical staff from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data which are transmitted by the title IV-E agency to ACF. The sampling frame will consist of cases of children who were eligible for foster care maintenance payments during the reporting period reflected in a title IV-E agency's most recent AFCARS data submission. For the initial primary review, if these data are not available or are deficient, an alternative sampling frame, consistent with one AFCARS six-month reporting period, will be selected by ACF in conjunction with the title IV-E agency.

(2) A sample of 80 cases (plus a 10 percent oversample of eight cases) from the title IV-E foster care program will be selected for the primary review utilizing probability sampling methodologies. Usually, the chosen methodology will be simple random sampling, but other probability samples may be utilized, when necessary and appropriate.

(3) Cases from the oversample will be substituted and reviewed for each of the original sample of 80 cases which is found to be in error.

(4) At the completion of the primary review, the review team will determine the number of ineligible cases. When the total number of ineligible cases does not exceed eight, ACF can conclude with a probability of 88 percent that in a population of 1000 or more cases the population ineligibility case error rate is less than 15 percent and the title IV-E agency will be considered in substantial compliance. For primary reviews held subsequent to the initial primary reviews, the acceptable population ineligibility case error rate threshold will be reduced from less than 15 percent (eight or fewer ineligible cases) to less than 10 percent (four or fewer ineligible cases). A title IV-E agency which meets this standard is considered to be in "substantial compliance" (see paragraph (h) of this section). A disallowance will be assessed for the ineligible cases for the period of time the cases are ineligible.

(5) A title IV-E agency which has been determined to be in "noncompliance" (i.e., not in substantial compliance) will be required to develop a program improvement plan according to the specifications discussed in paragraph (i) of this section, as well as undergo a secondary review. For the secondary review, a sample of 150 cases (plus a 10 percent oversample of 15 cases) will be drawn from the most recent AFCARS submission. Usually, the chosen methodology will be simple random sampling, but other probability samples may be utilized, when necessary and appropriate. Cases from the oversample will be substituted and reviewed for each of the original sample of 150 cases which is found to be in error.

(6) At the completion of the secondary review, the review team will calculate both the sample case ineligibility and dollar error rates for the cases determined ineligible during the review. An extrapolated disallowance equal to the lower limit of a 90 percent confidence interval for the population total dollars in error for the amount of time corresponding to the AFCARS reporting period will be assessed if both the child/provider (case) ineligibility and dollar error rates exceed 10 percent. If neither, or only one, of the error rates exceeds 10 percent, a disallowance will be assessed for the ineligible cases for the period of time the cases are ineligible.

(d) *Requirements subject to review.* Title IV-E agencies will be reviewed against the requirements of title IV-E of the Act regarding:

(1) The eligibility of the children on whose behalf the foster care maintenance payments are made (section 472(a)(1)-(4) of the Act) to include:

(i) Judicial determinations regarding "reasonable efforts" and "contrary to the welfare" in accordance with § 1356.21(b) and (c), respectively;

(ii) Voluntary placement agreements in accordance with § 1356.22;

(iii) Responsibility for placement and care vested with the title IV-E or other public agency per section 472(a)(2)(B) of the Act;

(iv) Placement in a licensed foster family home or child care institution; and,

(v) Eligibility for AFDC under such State plan as it was in effect on July 16, 1996 per section 472(a)(3) or 479B(c)(1)(C)(ii)(II) of the Act, as appropriate.

(2) Allowable payments made to foster care providers who comport with sections 471(a)(10), 471(a)(20), 472(b) and (c), and 479B(c)(2) of the Act and § 1356.30.

(e) *Review instrument.* A title IV-E foster care eligibility review checklist will be used when conducting the eligibility review.

(f) *Eligibility determination—child.* The case record of the child must contain sufficient documentation to verify a child's eligibility in accordance with paragraph (d)(1) of this section, in order to substantiate payments made on the child's behalf.

(g) *Eligibility determination—provider.* (1) For each case being reviewed, the title IV-E agency must make available a licensing file which contains the licensing history, including a copy of the certificate of licensure/approval or letter of approval, for each of the providers in the following categories:

- (i) Public child care institutions with 25 children or less in residence;
- (ii) Private child care institutions;
- (iii) Group homes; and
- (iv) Foster family homes, including relative homes.

(2) The licensing file must contain documentation that the title IV-E agency has complied with the safety requirements for foster and adoptive placements in accordance with § 1356.30.

(3) If the licensing file does not contain sufficient information to support a child's placement in a licensed facility, the title IV-E agency may provide supplemental information from other sources ( e.g., a computerized database).

(h) *Standards of compliance.* (1) Disallowances will be taken, and plans for program improvement required, based on the extent to which a title IV-E agency is not in substantial compliance with recipient or provider eligibility provisions of title IV-E, or applicable regulations in 45 CFR parts 1355 and 1356.

(2) Substantial compliance and noncompliance are defined as follows:

(i) *Substantial compliance* —For the primary review (of the sample of 80 cases), no more than eight of the title IV-E cases reviewed may be determined to be ineligible. (This critical number of allowable "errors," i.e., ineligible cases, is reduced to four errors or less in primary reviews held subsequent to the initial primary review). For the secondary review (if required), *substantial compliance* means either the case ineligibility or dollar error rate does not exceed 10 percent.

(ii) *Noncompliance* —means not in substantial compliance. For the primary review (of the sample of 80 cases), nine or more of the title IV-E cases reviewed must be determined to be ineligible. (This critical number of allowable "errors," i.e., ineligible cases, is reduced to five or more in primary reviews subsequent to the initial primary review). For the secondary review (if required), *noncompliance* means both the case ineligibility and dollar error rates exceed 10 percent.

(3) ACF will notify the title IV-E agency in writing within 30 calendar days after the completion of the review of whether the title IV-E agency is, or is not, operating in substantial compliance.

(4) Title IV-E agencies which are determined to be in substantial compliance must undergo a subsequent review after a minimum of three years.

(i) *Program improvement plans.* (1) Title IV-E agencies which are determined to be in noncompliance with recipient or provider eligibility provisions of title IV-E, or applicable regulations in 45 CFR Parts 1355 and 1356, will develop a program improvement plan designed to correct the areas determined not to be in substantial compliance. The program improvement plan will:

(i) Be developed jointly by title IV-E agency and Federal staff;

(ii) Identify the areas in which the title IV-E agency's program is not in substantial compliance;

(iii) Not extend beyond one year. A title IV-E agency will have a maximum of one year in which to implement and complete the provisions of the program improvement plan unless State/Tribal legislative action is required. In such instances, an extension may be granted with the title IV-E agency and ACF negotiating the terms and length of such extension that shall not exceed the last day of the first legislative session after the date of the program improvement plan; and

(iv) Include:

(A) Specific goals;

(B) The action steps required to correct each identified weakness or deficiency; and,

(C) a date by which each of the action steps is to be completed.

(2) Title IV-E agencies determined not to be in substantial compliance as a result of a primary review must submit the program improvement plan to ACF for approval within 90 calendar days from the date the title IV-E agency receives written notification that it is not in substantial compliance. This deadline may be extended an additional 30 calendar days when a title IV-E agency submits additional documentation to ACF in support of cases determined to be ineligible as a result of the on-site eligibility review.

(3) The ACF Regional Office will intermittently review, in conjunction with the title IV-E agency, the title IV-E agency's progress in completing the prescribed action steps in the program improvement plan.

(4) If a title IV-E agency does not submit an approvable program improvement plan in accordance with the provisions of paragraphs (i)(1) and (2) of this section, ACF will move to a secondary review in accordance with paragraph (c) of this section.

(j) *Disallowance of funds.* The amount of funds to be disallowed will be determined by the extent to which a title IV-E agency is not in substantial compliance with recipient or provider eligibility provisions of title IV-E, or applicable regulations in 45 CFR parts 1355 and 1356.

(1) Title IV-E agencies which are found to be in substantial compliance during the primary or secondary review will have disallowances (if any) determined on the basis of individual cases reviewed and found to be in error. The amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time that each case has been ineligible.

(2) Title IV-E agencies which are found to be in noncompliance during the primary review will have disallowances determined on the basis of individual cases reviewed and found to be in error, and must implement a program improvement plan in accordance with the provisions contained within it. A secondary review will be conducted no later than during the AFCARS reporting period which immediately follows the program improvement plan completion date on a sample of 150 cases drawn from the title IV-E agency's most recent AFCARS data. If both the case ineligibility and dollar error rates exceed 10 percent, the title IV-E agency is not in compliance and an additional disallowance will be determined based on extrapolation from the sample to the universe of claims paid for the duration of the AFCARS reporting period ( i.e., all title IV-E funds expended for a case during the quarter(s) that case is ineligible, including administrative costs). If either the case ineligibility or dollar rate does not exceed 10 percent, the amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time the case has been determined to be ineligible.

(3) The title IV-E agency will be liable for interest on the amount of funds disallowed by the Department, in accordance with the provisions of 45 CFR 30.18.

(4) Title IV-E agencies may appeal any disallowance actions taken by ACF to the HHS Departmental Appeals Board in accordance with regulations at 45 CFR part 16.

[65 FR 4091, Jan. 25, 2000, as amended at 66 FR 58677, Nov. 23, 2001; 77 FR 951, Jan. 6, 2012]

#### **§ 1356.80 Scope of the National Youth in Transition Database.**

The requirements of the National Youth in Transition Database (NYTD) §§ 1356.81 through 1356.86 of this part apply to the agency in any State, the District of Columbia, or Territory, that administers, or supervises the administration of the Chafee Foster Care Independence Program (CFCIP) under section 477 of the Social Security Act (the Act).

[73 FR 10365, Feb. 26, 2008]

#### **§ 1356.81 Reporting population.**

The reporting population is comprised of all youth in the following categories:

(a) *Served population* . Each youth who receives an independent living service paid for or provided by the State agency during the reporting period.

(b) *Baseline population*. Each youth who is in foster care as defined in 45 CFR 1355.20 and reaches his or her 17th birthday during Federal fiscal year (FFY) 2011, and such youth who reach a 17th birthday during every third year thereafter.

(c) *Follow-up population*. Each youth who reaches his or her 19th or 21st birthday in a Federal fiscal year and had participated in data collection as part of the baseline population, as specified in section 1356.82(a)(2) of this part. A youth has participated in the outcomes data collection if the State agency reports to ACF a valid response (*i.e.*, a response option other than “declined” and “not applicable”) to any of the outcomes-related elements described in section 1356.83(g)(37) through (g)(58) of this part.

[73 FR 10365, Feb. 26, 2008]

#### **§ 1356.82 Data collection requirements.**

(a) The State agency must collect applicable information as specified in section 1356.83 of this part on the reporting population defined in section 1356.81 of this part in accordance with the following:

(1) For each youth in the served population, the State agency must collect information for the data elements specified in section 1356.83(b) and 1356.83(c) of this part on an ongoing basis, for as long as the youth receives services.

(2) For each youth in the baseline population, the State agency must collect information for the data elements specified in section 1356.83(b) and 1356.83(d) of this part. The State agency must collect this information on a new baseline population every three years.

(i) For each youth in foster care who turns age 17 in FFY 2011, the State agency must collect this information within 45 days following the youth's 17th birthday, but not before that birthday.

(ii) Every third Federal fiscal year thereafter, the State agency must collect this information on each youth in foster care who turns age 17 during the year within 45 days following the youth's 17th birthday, but not before that birthday.

(iii) The State agency must collect this information using the survey questions in appendix B of this part entitled “Information to collect from all youth surveyed for outcomes, whether in foster care or not.”

(3) For each youth in the follow-up population, the State agency must collect information on the data elements specified in sections 1356.83(b) and 1356.83(e) of this part within the reporting period of the youth's 19th and 21st birthday. The State agency must collect the information using the appropriate survey questions in appendix B of this part, depending upon whether the youth is in foster care.

(b) The State agency may select a sample of the 17-year-olds in the baseline population to follow over time consistent with the sampling requirements described in section 1356.84 of this part to satisfy the data collection requirements in paragraph (a)(3) of this section for the follow-up population. A State that samples must identify the youth at age 19 who participated in the outcomes data collection as part of the baseline population at age 17 who are not in the sample in accordance with 45 CFR 1356.83(e).

[73 FR 10365, Feb. 26, 2008]

#### **§ 1356.83 Reporting requirements and data elements.**

(a) *Reporting periods and deadlines*. The six-month reporting periods are from October 1 to March 31 and April 1 to September 30. The State agency must submit data files that include the information specified in this section to ACF on a semi-annual basis, within 45 days of the end of the reporting period (*i.e.*, by May 15 and November 14).

(b) *Data elements for all youth*. The State agency must report the data elements described in paragraphs (g)(1) through (g)(13) of this section for each youth in the entire reporting population defined in section 1356.81 of this part.

(c) *Data elements for served youth*. The State agency must report the data elements described in paragraphs (g)(14) through (g)(33) of this section for each youth in the served population defined in section 1356.81(a) of this part.

(d) *Data elements for baseline youth*. The State agency must report the data elements described in paragraphs (g)(34) through (g)(58) of this section for each youth in the baseline population defined in section 1356.81(b) of this part.

(e) *Data elements for follow-up youth*. The State agency must report the data elements described in paragraphs (g)(34) through (g)(58) of this section for each youth in the follow-up population defined in section 1356.81(c) of this part or alternatively, for each youth selected in accordance with the sampling procedures in section 1356.84 of this part. A State that samples must identify in the outcomes reporting status element described in paragraph (g)(34), the 19-year-old youth who participated in the outcomes data collection as a part of the baseline population at age 17, who are not in the sample.

(f) *Single youth record*. The State agency must report all applicable data elements for an individual youth in one record per reporting period.

(g) *Data element descriptions*. For each element described in paragraphs (g)(1) through (58) of this section, the State agency must indicate the applicable response as instructed.

(1) *State*. State means the State responsible for reporting on the youth. Indicate the first two digits of the State's Federal Information Processing Standard (FIPS) code for the State submitting the report to ACF.

(2) *Report date*. The report date corresponds with the end of the current reporting period. Indicate the last month and the year of the reporting period.

(3) *Record number*. The record number is the encrypted, unique person identification number for the youth. The State agency must apply and retain the same encryption routine or method for the person identification number across all reporting periods. The record number must be encrypted in accordance with ACF standards. Indicate the record number for the youth.

(i) If the youth is in foster care as defined in 45 CFR 1355.20 or was during the current or previous reporting period, the State agency must use and report to the NYTD the same person identification number for the youth the State agency reports to AFCARS. The person identification number must remain the same for the youth wherever the youth is living and in any subsequent NYTD reports.

(ii) If the youth was never in the State's foster care system as defined in 45 CFR 1355.20, the State agency must assign a person identification number that must remain the same for the youth wherever the youth is living and in any subsequent reports to NYTD.

(4) *Date of birth*. The youth's date of birth. Indicate the year, month, and day of the youth's birth.

(5) *Sex*. The youth's sex. Indicate whether the youth is male or female as appropriate.

(6) *Race: American Indian or Alaska Native*. In general, a youth's race is determined by the youth or the youth's parent(s). An American Indian or Alaska Native youth has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment. Indicate whether this racial category applies for the youth, with a "yes" or "no."

(7) *Race: Asian*. In general, a youth's race is determined by the youth or the youth's parent(s). An Asian youth has origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam. Indicate whether this racial category applies for the youth, with a "yes" or "no."

(8) *Race: Black or African American*. In general, a youth's race is determined by the youth or the youth's parent(s). A Black or African American youth has origins in any of the black racial groups of Africa. Indicate whether this racial category applies for the youth, with a "yes" or "no."

(9) *Race: Native Hawaiian or Other Pacific Islander.* In general, a youth's race is determined by the youth or the youth's parent(s). A Native Hawaiian or Other Pacific Islander youth has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands. Indicate whether this racial category applies for the youth, with a "yes" or "no."

(10) *Race: White.* In general, a youth's race is determined by the youth or the youth's parent(s). A White youth has origins in any of the original peoples of Europe, the Middle East, or North Africa. Indicate whether this racial category applies for the youth, with a "yes" or "no."

(11) *Race: unknown.* The race, or at least one race of the youth is unknown, or the youth and/or parent is not able to communicate the youth's race. Indicate whether this category applies for the youth, with a "yes" or "no."

(12) *Race: declined.* The youth or parent has declined to identify a race. Indicate whether this category applies for the youth, with a "yes" or "no."

(13) *Hispanic or Latino ethnicity.* In general, a youth's ethnicity is determined by the youth or the youth's parent(s). A youth is of Hispanic or Latino ethnicity if the youth is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate which category applies, with "yes," "no," "unknown" or "declined," as appropriate. "Unknown" means that the youth and/or parent is unable to communicate the youth's ethnicity. "Declined" means that the youth or parent has declined to identify the youth's Hispanic or Latino ethnicity.

(14) *Foster care status—services.* The youth receiving services is or was in foster care during the reporting period if the youth is or was in the placement and care responsibility of the State title IV-B/IV-E agency in accordance with the definition of foster care in 45 CFR 1355.20. Indicate whether the youth is or was in foster care at any point during the reporting period, with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(15) *Local agency.* The local agency is the county or equivalent jurisdictional unit that has primary responsibility for placement and care of a youth who is in foster care consistent with the definition in 45 CFR 1355.20, or that has primary responsibility for providing services to a youth who is not in foster care. Indicate the five-digit Federal Information Processing Standard (FIPS) code(s) that corresponds to the identity of the county or equivalent unit jurisdiction(s) that meets these criteria during the reporting period. If a youth who is not in foster care is provided services by a centralized unit only, rather than a county agency, indicate "centralized unit." If the youth is not in the served population this element must be left blank.

(16) *Federally recognized tribe.* The youth is enrolled in or eligible for membership in a federally recognized tribe. The term "federally recognized tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450 *et seq.*). Indicate "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(17) *Adjudicated delinquent.* Adjudicated delinquent means that a State or Federal court of competent jurisdiction has adjudicated the youth as a delinquent. Indicate "yes," or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(18) *Educational level.* Educational level means the highest educational level completed by the youth. For example, for a youth currently in 11th grade, "10th grade" is the highest educational level completed. Post-secondary education or training refers to any post-secondary education or training, other than an education pursued at a college or university. College refers to completing at least a semester of study at a college or university. Indicate the highest educational level completed by the youth during the reporting period. If the youth is not in the served population this element must be left blank.

(19) *Special education.* The term "special education," means specifically designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. Indicate whether the youth has received special education instruction during the reporting period with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(20) *Independent living needs assessment*. An independent living needs assessment is a systematic procedure to identify a youth's basic skills, emotional and social capabilities, strengths, and needs to match the youth with appropriate independent living services. An independent living needs assessment may address knowledge of basic living skills, job readiness, money management abilities, decision-making skills, goal setting, task completion, and transitional living needs. Indicate whether the youth received an independent living needs assessment that was paid for or provided by the State agency during the reporting period with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(21) *Academic support*. Academic supports are services designed to help a youth complete high school or obtain a General Equivalency Degree (GED). Such services include the following: Academic counseling; preparation for a GED, including assistance in applying for or studying for a GED exam; tutoring; help with homework; study skills training; literacy training; and help accessing educational resources. Academic support does not include a youth's general attendance in high school. Indicate whether the youth received academic supports during the reporting period that were paid for or provided by the State agency with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(22) *Post-secondary educational support*. Post-secondary educational support are services designed to help a youth enter or complete a post-secondary education and include the following: Classes for test preparation, such as the Scholastic Aptitude Test (SAT); counseling about college; information about financial aid and scholarships; help completing college or loan applications; or tutoring while in college. Indicate whether the youth received post-secondary educational support during the reporting period that was paid for or provided by the State agency with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(23) *Career preparation*. Career preparation services focus on developing a youth's ability to find, apply for, and retain appropriate employment. Career preparation includes the following types of instruction and support services: Vocational and career assessment, including career exploration and planning, guidance in setting and assessing vocational and career interests and skills, and help in matching interests and abilities with vocational goals; job seeking and job placement support, including identifying potential employers, writing resumes, completing job applications, developing interview skills, job shadowing, receiving job referrals, using career resource libraries, understanding employee benefits coverage, and securing work permits; retention support, including job coaching; learning how to work with employers and other employees; understanding workplace values such as timeliness and appearance; and understanding authority and customer relationships. Indicate whether the youth received career preparation services during the reporting period that was paid for or provided by the State agency with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(24) *Employment programs or vocational training*. Employment programs and vocational training are designed to build a youth's skills for a specific trade, vocation, or career through classes or on-site training. Employment programs include a youth's participation in an apprenticeship, internship, or summer employment program and do not include summer or after-school jobs secured by the youth alone. Vocational training includes a youth's participation in vocational or trade programs and the receipt of training in occupational classes for such skills as cosmetology, auto mechanics, building trades, nursing, computer science, and other current or emerging employment sectors. Indicate whether the youth attended an employment program or received vocational training during the reporting period that was paid for or provided by the State agency, with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(25) *Budget and financial management*. Budget and financial management assistance includes the following types of training and practice: Living within a budget; opening and using a checking and savings account; balancing a checkbook; developing consumer awareness and smart shopping skills; accessing information about credit, loans and taxes; and filling out tax forms. Indicate whether the youth received budget and financial management assistance during the reporting period that was paid for or provided by the State agency with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(26) *Housing education and home management training*. Housing education includes assistance or training in locating and maintaining housing, including filling out a rental application and acquiring a lease, handling security deposits and utilities, understanding practices for keeping a healthy and safe home, understanding tenants rights and responsibilities, and handling landlord complaints. Home management includes instruction in food preparation, laundry, housekeeping, living cooperatively, meal planning, grocery shopping and basic maintenance and repairs. Indicate whether the youth received housing education or home management training during the reporting period that was paid for or provided by the State agency with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(27) *Health education and risk prevention* . Health education and risk prevention includes providing information about: Hygiene, nutrition, fitness and exercise, and first aid; medical and dental care benefits, health care resources and insurance, prenatal care and maintaining personal medical records; sex education, abstinence education, and HIV prevention, including education and information about sexual development and sexuality, pregnancy prevention and family planning, and sexually transmitted diseases and AIDS; substance abuse prevention and intervention, including education and information about the effects and consequences of substance use (alcohol, drugs, tobacco) and substance avoidance and intervention. Health education and risk prevention does not include the youth's actual receipt of direct medical care or substance abuse treatment. Indicate whether the youth received these services during the reporting period that were paid for or provided by the State agency with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(28) *Family support and healthy marriage education* . Such services include education and information about safe and stable families, healthy marriages, spousal communication, parenting, responsible fatherhood, childcare skills, teen parenting, and domestic and family violence prevention. Indicate whether the youth received these services that were paid for or provided by the State agency during the reporting period with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(29) *Mentoring* . Mentoring means that the youth has been matched with a screened and trained adult for a one-on-one relationship that involves the two meeting on a regular basis. Mentoring can be short-term, but it may also support the development of a long-term relationship. While youth often are connected to adult role models through school, work, or family, this service category only includes a mentor relationship that has been facilitated, paid for or provided by the State agency or its staff. Indicate whether the youth received mentoring services that were paid for or provided by the State agency during the reporting period with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(30) *Supervised independent living* . Supervised independent living means that the youth is living independently under a supervised arrangement that is paid for or provided by the State agency. A youth in supervised independent living is not supervised 24 hours a day by an adult and often is provided with increased responsibilities, such as paying bills, assuming leases, and working with a landlord, while under the supervision of an adult. Indicate whether the youth was living in a supervised independent living setting that was paid or provided by the State agency during the reporting period with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(31) *Room and board financial assistance* . Room and board financial assistance is a payment that is paid for or provided by the State agency for room and board, including rent deposits, utilities, and other household start-up expenses. Indicate whether the youth received financial assistance for room and board that was paid for or provided by during the reporting period with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(32) *Education financial assistance* . Education financial assistance is a payment that is paid for or provided by the State agency for education or training, including allowances to purchase textbooks, uniforms, computers, and other educational supplies; tuition assistance; scholarships; payment for educational preparation and support services (i.e., tutoring), and payment for GED and other educational tests. This financial assistance also includes vouchers for tuition or vocational education or tuition waiver programs paid for or provided by the State agency. Indicate whether the youth received education financial assistance during the reporting period that was paid for or provided by the State agency with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(33) *Other financial assistance* . Other financial assistance includes any other payments made or provided by the State agency to help the youth live independently. Indicate whether the youth received any other financial assistance that was paid for or provided by the State agency during the reporting period with a "yes" or "no" as appropriate. If the youth is not in the served population this element must be left blank.

(34) *Outcomes reporting status* . The outcomes reporting status represents the youth's participation, or lack thereof, in the outcomes data collection. If the State agency collects and reports information on any of the data elements in paragraphs (g)(37) through (g)(58) of this section for a youth in the baseline or follow-up sample or population, indicate that the youth participated. If a youth is in the baseline or follow-up sample or population, but the State agency is unable to collect the information, indicate the reason and leave the data elements in paragraph (g)(37) through (g)(58) of this section blank. If a 19-year old youth in the follow-up population is not in the sample, indicate that the youth is not in the sample. If the youth is not in the baseline or follow-up population this element must be left blank.

- (i) *Youth participated* . The youth participated in the outcome survey, either fully or partially.
  - (ii) *Youth declined* . The State agency located the youth successfully and invited the youth's participation, but the youth declined to participate in the data collection.
  - (iii) *Parent declined* . The State agency invited the youth's participation, but the youth's parent/guardian declined to grant permission. This response may be used only when the youth has not reached the age of majority in the State and State law or policy requires a parent/guardian's permission for the youth to participate in information collection activities.
  - (iv) *Incapacitated* . The youth has a permanent or temporary mental or physical condition that prevents him or her from participating in the outcomes data collection.
  - (v) *Incarcerated* . The youth is unable to participate in the outcomes data collection because of his or her incarceration.
  - (vi) *Runaway/missing* . A youth in foster care is known to have run away or be missing from his or her foster care placement.
  - (vii) *Unable to locate/invite* . The State agency could not locate a youth who is not in foster care or otherwise invite such a youth's participation.
  - (viii) *Death* . The youth died prior to his participation in the outcomes data collection.
  - (ix) *Not in sample* . The 19-year-old youth participated in the outcomes data collection as a part of the baseline population at age 17, but the youth is not in the State's follow-up sample. This response option applies only when the outcomes data collection is required on the follow-up population of 19-year-old youth.
- (35) *Date of outcome data collection* . The date of outcome data collection is the latest date that the agency collected data from a youth for the elements described in paragraphs (g)(38) through (g)(58) of this section. Indicate the month, day and year of the outcomes data collection. If the youth is not in the baseline or follow-up population this element must be left blank.
- (36) *Foster care status—outcomes* . The youth is in foster care if the youth is under the placement and care responsibility of the State title IV-B/IV-E agency in accordance with the definition of foster care in 45 CFR 1355.20. Indicate whether the youth is in foster care on the date of outcomes data collection with a "yes" or "no" as appropriate. If the youth is not in the baseline or follow-up population this element must be left blank.
- (37) *Current full-time employment* . A youth is employed full-time if employed at least 35 hours per week, in one or multiple jobs, as of the date of the outcome data collection. Indicate whether the youth is employed full-time, with a "yes" or "no" as appropriate. If the youth does not answer this question indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.
- (38) *Current part-time employment* . A youth is employed part-time if employed between one and 34 hours per week, in one or multiple jobs, as of the date of the outcome data collection. Indicate whether the youth is employed part-time, with a "yes" or "no." If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.
- (39) *Employment-related skills* . A youth has obtained employment-related skills if the youth completed an apprenticeship, internship, or other on-the-job training, either paid or unpaid, in the past year. The experience must help the youth acquire employment-related skills, such as specific trade skills such as carpentry or auto mechanics, or office skills such as word processing or use of office equipment. Indicate whether the youth has obtained employment-related skills, with a "yes" or "no" as appropriate. If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.
- (40) *Social Security* . A youth is receiving some form of Social Security if receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), either directly or as a dependent beneficiary as of the date of the outcome data collection. SSI payments are made to eligible low-income persons with disabilities. SSDI payments are made to persons with a certain amount of work history who become disabled. A youth may receive SSDI payments through a parent. Indicate whether the youth is receiving a form of Social Security payments, with a

"yes" or "no" as appropriate. If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(41) *Educational aid*. A youth is receiving educational aid if using a scholarship, voucher (including education or training vouchers pursuant to section 477(h)(2) of the Social Security Act), grant, stipend, student loan, or other type of educational financial aid to cover educational expenses as of the date of the outcome data collection. Scholarships, grants, and stipends are funds awarded for spending on expenses related to gaining an education. "Student loan" means a government-guaranteed, low-interest loan for students in post-secondary education. Indicate whether the youth is receiving educational aid with a "yes" or "no" as appropriate. If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(42) *Public financial assistance*. A youth is receiving public financial assistance if receiving ongoing cash welfare payments from the government to cover some of his or her basic needs, as of the date of the outcome data collection. Public financial assistance does not include government payments or subsidies for specific purposes, such as unemployment insurance, child care subsidies, education assistance, food stamps or housing assistance. Indicate whether the youth is receiving public financial assistance, with "yes" or "no" as appropriate, and "not applicable" for a youth still in foster care. If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(43) *Public food assistance*. A youth is receiving public food assistance if receiving food stamps in any form (i.e., government-sponsored checks, coupons or debit cards) to buy eligible food at authorized stores as of the date of the outcome data collection. This definition includes receiving public food assistance through the Women, Infants, and Children (WIC) program. Indicate whether the youth is receiving some form of public food assistance with "yes" or "no," and "not applicable" for a youth still in foster care. If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(44) *Public housing assistance*. A youth is receiving public housing assistance if the youth is living in government-funded public housing, or receiving a government-funded housing voucher to pay for part of his/her housing costs as of the date of the outcome data collection. CFCIP room and board payments are not included in this definition. Indicate whether the youth is receiving housing assistance with "yes" or "no" and "not applicable" for a youth still in foster care. If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(45) *Other financial support*. A youth has other financial support if receiving any other periodic and/or significant financial resources or support from another source not listed in the elements described in paragraphs (g)(41) through (g)(44) of this section as of the date of outcome data collection. Such support can include payments from a spouse or family member (biological, foster or adoptive), child support that the youth receives for him or herself, or funds from a legal settlement. This definition does not include occasional gifts, such as birthday or graduation checks or small donations of food or personal incidentals, child care subsidies, child support for a youth's child, or other financial support which does not benefit the youth directly in supporting himself or herself. Indicate whether the youth is receiving any other financial support with a "yes" or "no." If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(46) *Highest educational certification received*. A youth has received an education certificate if the youth has a high school diploma or general equivalency degree (GED), vocational certificate, vocational license, associate's degree (e.g., A.A.), bachelor's degree (e.g., B.A. or B.S.), or a higher degree as of the date of the outcome data collection. Indicate the highest degree that the youth has received. If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(i) A vocational certificate is a document stating that a person has received education or training that qualifies him or her for a particular job, e.g., auto mechanics or cosmetology.

(ii) A vocational license is a document that indicates that the State or local government recognizes an individual as a qualified professional in a particular trade or business.

(iii) An associate's degree is generally a two-year degree from a community college.

(iv) A bachelor's degree is a four-year degree from a college or university.

(v) A higher degree indicates a graduate degree, such as a Master's Degree or a Juris Doctor (J.D.).

(vi) None of the above means that the youth has not received any of the above educational certifications.

(47) *Current enrollment and attendance.* Indicate whether the youth is enrolled in and attending high school, GED classes, or postsecondary vocational training or college, as of the date of the outcome data collection. A youth is still considered enrolled in and attending school if the youth would otherwise be enrolled in and attending a school that is currently out of session. Indicate whether the youth is currently enrolled and attending school with a "yes" or "no." If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(48) *Connection to adult.* A youth has a connection to an adult if, as of the date of the outcome data collection, the youth knows an adult who he or she can go to for advice or guidance when there is a decision to make or a problem to solve, or for companionship when celebrating personal achievements. The adult must be easily accessible to the youth, either by telephone or in person. This can include, but is not limited to adult relatives, parents or foster parents. The definition excludes spouses, partners, boyfriends or girlfriends and current caseworkers. Indicate whether the youth has such a connection with an adult with a "yes" or "no." If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(49) *Homelessness.* A youth is considered to have experienced homelessness if the youth had no regular or adequate place to live. This definition includes situations where the youth is living in a car or on the street, or staying in a homeless or other temporary shelter. For a 17-year-old youth in the baseline population, the data element relates to a youth's lifetime experiences. For a 19- or 21-year-old youth in the follow-up population, the data element relates to the youth's experience in the past two years. Indicate if the youth has been homeless with a "yes" or "no." If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(50) *Substance abuse referral.* A youth has received a substance abuse referral if the youth was referred for an alcohol or drug abuse assessment or counseling. For a 17-year-old youth in the baseline population, the data element relates to a youth's lifetime experience. For a 19- or 21-year-old youth in the follow-up population, the data element relates to the youth's experience in the past two years. This definition includes either a self-referral or referral by a social worker, school staff, physician, mental health worker, foster parent, or other adult. Alcohol or drug abuse assessment is a process designed to determine if someone has a problem with alcohol or drug use. Indicate whether the youth had a substance abuse referral with a "yes" or "no." If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(51) *Incarceration.* A youth is considered to have been incarcerated if the youth was confined in a jail, prison, correctional facility, or juvenile or community detention facility in connection with allegedly committing a crime (misdemeanor or felony). For a 17-year-old youth in the baseline population, the data element relates to a youth's lifetime experience. For a 19- or 21-year-old youth in the follow-up population, the data element relates to the youth's experience in the past two years. Indicate whether the youth was incarcerated with a "yes" or "no." If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(52) *Children.* A youth is considered to have a child if the youth has given birth herself, or the youth has fathered any children who were born. For a 17-year-old youth in the baseline population, the data element relates to a youth's lifetime experience. For a 19- or 21-year-old youth in the follow-up population, the data element refers to children born to the youth in the past two years only. This refers to biological parenthood. Indicate whether the youth had a child with a "yes" or "no." If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(53) *Marriage at child's birth.* A youth is married at the time of the child's birth if he or she was united in matrimony according to the laws of the State to the child's other parent. Indicate whether the youth was married to the child's other parent at the time of the birth of any child reported in the element described in paragraph (g)(52) of this section with a "yes" or "no". If the youth does not answer this question, indicate "declined." If the answer to the element described in paragraph (g)(52) of this section is "no," indicate "not applicable." If the youth is not in the baseline or follow-up population this element must be left blank.

(54) *Medicaid.* A youth is receiving Medicaid if the youth is participating in a Medicaid-funded State program, which is a medical assistance program supported by the Federal and State government under title XIX of the Social Security Act as of the date of outcomes data collection. Indicate whether the youth receives Medicaid with "yes," "no," or "don't know" as appropriate. If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(55) *Other health insurance coverage.* A youth has other health insurance if the youth has a third party pay (other than Medicaid) for all or part of the costs of medical care, mental health care, and/or prescription drugs, as of the date of the outcome data collection. This definition includes group coverage offered by employers, schools or associations, an individual health plan, self-employed plans, or inclusion in a parent's insurance plan. This also could include access to free health care through a college, Indian Health Service, or other source. Medical or drug discount cards or plans are not insurance. Indicate "yes", "no", or "don't know" as appropriate. If the youth does not answer this question, indicate "declined."

(56) *Health insurance type: Medical.* If the youth has indicated that he or she has health insurance coverage in the element described in paragraph (g)(55) of this section, indicate whether the youth has insurance that pays for all or part of medical health care services. Indicate "yes", "no", or "don't know" as appropriate, or "not applicable" if the youth did not indicate any health insurance coverage. If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(57) *Health insurance type: Mental health.* If the youth has indicated that he or she has medical health insurance coverage as described in paragraph (g)(56) of this section, indicate whether the youth has insurance that pays for all or part of the costs for mental health care services, such as counseling or therapy. Indicate "yes", "no", or "don't know" as appropriate, or "not applicable" if the youth did not indicate having medical health insurance coverage. If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(58) *Health insurance type: Prescription drugs.* If the youth has indicated that he or she has medical health insurance coverage as described in paragraph (g)(56) of this section, indicate whether the youth has insurance coverage that pays for part or all of the costs of some prescription drugs. Indicate "yes", "no", or "don't know" as appropriate, or "not applicable" if the youth did not indicate having medical health insurance coverage. If the youth does not answer this question, indicate "declined." If the youth is not in the baseline or follow-up population this element must be left blank.

(h) *Electronic reporting.* The State agency must report all data to ACF electronically according to ACF's specifications and appendix A of this part.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number OMB 0970-0340. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[73 FR 10365, Feb. 26, 2008, as amended at 77 FR 952, Jan. 6, 2012]

#### **§ 1356.84 Sampling.**

(a) The State agency may collect and report the information required in section 1356.83(e) of this part on a sample of the baseline population consistent with the sampling requirements described in paragraphs (b) and (c) of this section.

(b) The State agency must select the follow-up sample using simple random sampling procedures based on random numbers generated by a computer program, unless ACF approves another sampling procedure. The sampling universe consists of youth in the baseline population consistent with 45 CFR 1356.81(b) who participated in the State agency's data collection at age 17.

(c) The sample size is based on the number of youth in the baseline population who participated in the State agency's data collection at age 17.

(1) If the number of youth in the baseline population who participated in the outcome data collection at age 17 is 5,000 or less, the State agency must calculate the sample size using the formula in appendix C of this part, with the Finite Population Correction (FPC). The State agency must increase the resulting number by 30 percent to allow for attrition, but the sample size may not be larger than the number of youth who participated in data collection at age 17.

(2) If the number of youth in the baseline population who participated in the outcome data collection at age 17 is greater than 5,000, the State agency must calculate the sample size using the formula in appendix C of this part, without the FPC. The State agency must increase the resulting number by 30 percent to allow for attrition, but the sample size must not be larger than the number of youth who participated in data collection at age 17.

**§ 1356.85 Compliance.**

(a) *File submission standards.* A State agency must submit a data file in accordance with the following file submission standards:

(1) *Timely data.* The data file must be received in accordance with the reporting period and timeline described in section 1356.83(a) of this part;

(2) *Format.* The data file must be in a format that meets ACF's specifications; and

(3) *Error-free information.* The file must contain data in the general and demographic elements described in section 1356.83(g)(1) through (g)(5), (g)(14), and (g)(36) of this part that is 100 percent error-free as defined in paragraph (c) of this section.

(b) *Data standards.* A State agency also must submit a file that meets the following data standards:

(1) *Error-free.* The data for the applicable demographic, service and outcomes elements defined in section 1356.83(g)(6) through (13), (g)(15) through (35) and (g)(37) through (58) of this part must be 90 percent error-free as described and assessed according to paragraph (c) of this section.

(2) *Outcomes universe.* In any Federal fiscal year for which the State agency is required to submit information on the follow-up population, the State agency must submit a youth record containing at least outcomes data for the outcomes status element described in section 1356.83(g)(34) of this part on each youth for whom the State agency reported outcome information as part of the baseline population. Alternatively, if the State agency has elected to conduct sampling in accordance with section 1356.84 of this part, the State agency must submit a record containing at least outcomes data for the outcomes status element described in section 1356.83(g)(34) of this part on each 19-year-old youth in the follow-up population, inclusive of those youth who are not in the sample, and each 21-year-old youth in the follow-up sample.

(3) *Outcomes participation rate.* The State agency must report outcome information on each youth in the follow-up population at the rates described in paragraphs (b)(3)(i) through (iii) of this section. A youth has participated in the outcomes data collection if the State agency collected and reported a valid response (i.e., a response option other than "declined" or "not applicable") to any of the outcomes-related elements described in section 1356.83(g)(37) through (g)(58) of this part. ACF will exclude from the calculation of the participation rate any youth in the follow-up population who is reported as deceased, incapacitated or incarcerated in section 1356.83(g)(34) at the time information on the follow-up population is required.

(i) *Foster care youth participation rate.* The State agency must report outcome information on at least 80 percent of youth in the follow-up population who are in foster care on the date of outcomes data collection as indicated in section 1356.83(g)(35) and (g)(36) of this part.

(ii) *Discharged youth participation rate.* The State agency must report outcome information on at least 60 percent of youth in the follow-up population who are not in foster care on the date of outcomes data collection as indicated in section 1356.83(g)(35) and (g)(36) of this part.

(iii) *Effect of sampling on participation rates.* For State agencies electing to sample in accordance with section 1356.84 and appendix C of this part, ACF will apply the outcome participation rates in paragraphs (b)(2)(i) and (ii) of this section to the required sample size for the State.

(c) *Errors.* ACF will assess each State agency's data file for the following types of errors: Missing data, out-of-range data, or internally inconsistent data. The amount of errors acceptable for each reporting period is described in paragraphs (a) and (b) of this section.

(1) Missing data is any element that has a blank response when a blank response is not a valid response option as described in section 1356.83(g) of this part.

(2) Out-of-range data is any element that contains a value that is outside the parameters of acceptable responses or exceeds, either positively or negatively, the acceptable range of response options as described in section 1356.83(g) of this part; and

(3) Internally inconsistent data is any element that fails an internal consistency check designed to evaluate the logical relationship between elements in each record. The evaluation will identify all elements involved in a particular check as in error.

(d) *Review for compliance.* (1) ACF will determine whether a State agency's data file for each reporting period is in compliance with the file submission standards and data standards in paragraphs (a) and (b) of this section.

(i) For State agencies that achieve the file submission standards, ACF will determine whether the State agency's data file meets the data standards.

(ii) For State agencies that do not achieve the file submission standards or data standards, ACF will notify the State agency that they have an opportunity to submit a corrected data file by the end of the subsequent reporting period in accordance with paragraph (e) of this section.

(2) ACF may use monitoring tools or assessment procedures to determine whether the State agency is meeting all the requirements of section 1356.81 through 1356.85 of this part.

(e) *Submitting corrected data and noncompliance.* A State agency that does not submit a data file that meets the standards in section 1356.85 of this part will have an opportunity to submit a corrected data file in accordance with paragraphs (e)(1) and (e)(2) of this section.

(1) A State agency must submit a corrected data file no later than the end of the subsequent reporting period as defined in section 1356.83(a) of this part (i.e., by September 30 or March 31).

(2) If a State agency fails to submit a corrected data file that meets the compliance standards in section 1356.85 of this part and the deadline in paragraph (e)(1) of this section, ACF will make a final determination that the State is out of compliance, notify the State agency, and apply penalties as defined in section 1356.86 of this part.

[73 FR 10365, Feb. 26, 2008]

#### **§ 1356.86 Penalties for noncompliance.**

(a) *Definition of Federal funds subject to a penalty.* The funds that are subject to a penalty are the CFCIP funds allocated or reallocated to the State agency under section 477(c)(1) of the Act for the Federal fiscal year that corresponds with the reporting period for which the State agency was required originally to submit data according to section 1356.83(a) of this part.

(b) *Assessed penalty amounts.* ACF will assess penalties in the following amounts, depending on the area of noncompliance:

(1) *Penalty for not meeting file submission standards.* ACF will assess a penalty in an amount equivalent to two and one half percent (2.5%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the file submission standards defined in section 1356.85(a) of this part.

(2) *Penalty for not meeting certain data standards.* ACF will assess a penalty in an amount equivalent to:

(i) One and one quarter percent (1.25%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the data standard for error-free data as defined in section 1356.85(b)(1) of this part.

(ii) One and one quarter percent (1.25%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the outcome universe standard defined in section 1356.85(b)(2) of this part.

(iii) One half of one percent (0.5%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the participation rate for youth in foster care standard defined in section 1356.85(b)(3)(i) of this part.

(iv) One half of one percent (0.5%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the participation rate for discharged youth standard defined in section 1356.85(b)(3)(ii) of this part.

(c) *Calculation of the penalty amount.* ACF will add together any assessed penalty amounts described in paragraphs (b)(1) or (b)(2) of this section to determine the total calculated penalty result. If the total calculated penalty result is less than one percent of the funds subject to a penalty, the State agency will be penalized in the amount of one percent.

(d) *Notification of penalty amount.* ACF will advise the State agency in writing of a final determination of noncompliance and the amount of the total calculated penalty as determined in paragraph (c) of this section.

(e) *Interest.* The State agency will be liable for interest on the amount of funds penalized by the Department, in accordance with the provisions of 45 CFR 30.18.

(f) *Appeals.* The State agency may appeal, pursuant to 45 CFR part 16, ACF's final determination to the HHS Departmental Appeals Board.

[73 FR 10365, Feb. 26, 2008, as amended at 77 FR 952, Jan. 6, 2012]

**Appendix A to Part 1356—NYTD Data Elements can be found at:** <http://www.ecfr.gov>.

**Appendix B to Part 1356—NYTD Youth Outcome Survey can be found at:** <http://www.ecfr.gov>.

**Appendix C to Part 1356—Calculating Sample Size for NYTD Follow-Up Populations can be found at:**  
<http://www.ecfr.gov>