

OFFICE OF CHILDREN AND FAMILY SERVICES

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 | ADMINISTRATIVE DIRECTIVE | TRANSMITTAL: 00 OCFS ADM-5
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TO: Commissioners of Social Services
 DIVISION: Administration and Strategic Planning & Policy Development
 DATE: December 12, 2000

SUBJECT: Title IV-E Eligibility Standards

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 ATTACHMENTS: | Attachment 1 - Title IV-E Foster Care Checklist
 | (Initial and Re-determination)
 | Attachment 2 - Frequently Asked Questions
 | About the Title IV-E Final Rule
 | (Not on Line)
 | Attachment 3 Examples Of Removals
 | (not on Line)
 | Attachment 4 - TANF Qualified Non-Citizenship
 | Chart
 | Attachment 5 - Definitions Used In the
 | Adoption Program

FILING REFERENCES

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 Previous Releases | OCFS Regs. | Soc. Serv. | Manual Ref. | Misc. Ref.
 ADMs/INFs | Cancelled | | Law & Other | |
 92 ADM 7 | | | Legal Refer. | |
 95 ADM 5 | 93 ADM 34 | | Sections | |
 97 LCM 38 | 99 OCFS | 18 NYCRR | 470-479 Of | |
 98 LCM 8 | LCM 30 | Part 426 | the Social. | |
 00 OCFS ADM 2 | | | Security Act | |
 00 OCFS ADM 3 | | | 45 CFR Parts | |
 OCFS-4615EL (Rev. 11/98) | | | 1355-1357 | |

I. PURPOSE

The purpose of this Administrative Directive (ADM) is to advise social services districts of the revised federal Title IV-E eligibility and documentation standards resulting from the:

- Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),
- Federal Adoption and Safe Families Act of 1997 (ASFA), and
- Federal child welfare regulations amending Parts 1355, 1356 and 1357 of Title 45 of the Code of Federal Rules (CFR) effective March 27, 2000.

This ADM discusses Title IV-E eligibility requirements and identifies those that have been revised or are new. Other issues included in the new federal child welfare regulations, e.g. the Child and Family Services Review, are generally not discussed in this ADM and will be the subject of other releases from this Office.

This ADM also includes Title IV-E Adoption Assistance standards, although there is little change since the issuance of 93 ADM-34 in that program.

II. BACKGROUND

99 OCFs LCM-30 released in November 1999, which summarized the above referenced federal regulations when they were still proposed regulations, is cancelled. 93 ADM-34 is also cancelled.

The federal Department of Health and Human Services, Administration for Children and Families (ACF) issued final regulations on Title IV-E eligibility requirements on January 25, 2000 that became effective on March 27, 2000. The regulations mandate additional requirements for Title IV-E foster care eligibility and make more stringent certain previously existing requirements. ACF advised, in its commentary accompanying the release of the regulations, that portions of the regulations had been drafted prior to federal ASFA and reflect prior ACF concerns regarding Title IV-E eligibility documentation issues.

The new federal child welfare regulations also address Title IV-E and Title IV-B State Plan requirements, Title IV-E Eligibility and Child and Family Services Reviews and the Multiethnic Placement Act (MEPA). These issues are discussed in this ADM only to the extent that they impact Title IV-E eligibility and documentation.

The new federal child welfare regulations provide for delayed enforcement on a limited number of the new Title IV-E eligibility requirements which are identified in this ADM. Further, ACF is continuing to clarify the meaning of certain requirements discussed in this ADM and how states can fulfill them.

In addition, under provisions of PRWORA, documentation of eligibility for the Title IV-A, Aid to Dependent Children (ADC) program as a condition of eligibility for Title IV-E, was revised to mandate the use of the standards of the ADC program in effect in the State on July 16, 1996. This material was previously communicated to social services districts in 98 OCFS LCM-8 and is also addressed in this ADM.

III. TITLE IV-E FOSTER CARE STANDARDS

The predecessor to the Title IV-E Program, enacted in 1961 as the Aid to Dependent Children-Foster Care as a part of the Title IV-A ADC program, provided ADC-related benefits to children placed in foster care as a result of a judicial order removing the child from his or her home provided that the court determined the removal was in the child's best interests. Congress enacted the Foster Care and Adoption Assistance Act (FCAA) as the Title IV-E program in 1980. The FCAA emphasized providing child welfare services such as family preservation, but it retained the program's connection to the ADC program in the eligibility determination process. In 1996, Congress passed the PRWORA that ended the Title IV-A ADC program but retained that prior program's eligibility criteria as a condition of eligibility under the Title IV-E program. In 1997, Congress passed ASFA which emphasizes safety and promotes permanency for children.

A. General Criteria

Title IV-E requirements continue to emphasize documentation of eligibility in the following three areas, the:

1. legal authority governing the child's initial placement and continuation in foster care;
2. child's eligibility for the ADC program that was in effect on July 16, 1996; and
3. licensing of the foster care setting with an emphasis on safety.

Revised Title IV-E Foster Care Eligibility Checklists, Attachment 1 of this LCM, will assist districts in completing Title IV-E eligibility determinations and re-determinations on a case-by-case basis.

Title IV-E eligibility for a child is dependent on circumstances regarding the child at the time the child was removed from the home. The date of removal is defined in federal regulations. 45 CFR 1356.21 (k) defines it as the date that legal proceedings were initiated that led to the child's removal from his home, i.e. the:

- initiation of court proceedings leading to the removal of a child from his or her home under Article 3 (Juvenile Delinquency or JD), 7 (Person In Need of Supervision or PINS) or 10 (Abuse and Neglect) of the Family Court Act (FCA); or
- issuance of a court order legally transferring/removing custody of the child from the parent or other caretaker relative; or

- signing, by all relevant parties, of a voluntary placement agreement.

The date of removal starts the "removal clock".

Federal regulations define the date a child is considered to have entered foster care as the earlier of the date of a court's fact finding of abuse or neglect or 60 days after the child is removed from his or her home. This date begins the running of the "ASFA clock" that governs the ASFA planning and permanency requirements. It should not be confused with the "removal clock" governing many Title IV-E eligibility requirements. Most conditions of Title IV-E eligibility must be met at or around the time of the child's removal from the home. If these conditions are not met, Title IV-E cannot be established for the entire period of the foster care placement. These initial placement conditions are identified in this ADM.

B. Legal Authority For Placement In and Continuation of Foster Care.

Title IV-E eligibility criteria requires that a child be removed from his or her home pursuant either to a court order or a voluntary placement agreement. Voluntary surrender instruments are not recognized as providing initial placement into foster care for purposes of Title IV-E eligibility and may not be considered when determining initial Title IV-E eligibility. In order to affect IV-E eligibility, when a child is placed into foster care by a voluntary surrender agreement, a court order under 358-a must be secured to provide appropriate legal authority.

1. Court Ordered Placements

a. Placement and Custody (section 472 (a) of the Social Security Act)

To be eligible for Title IV-E, the court order placing a child into foster care must provide that the child's placement and care is given to the commissioner of social services, or the Commissioner of the Office of Children and Family Services (OCFS). Under State statutory standards, the transfer of legal custody equates to the Federal standard of an order of placement and care.

Orders awarding care and custody to other persons and entities do not provide foster care status nor Title IV-E eligibility. In addition, ACF advises that, although courts may direct placement of a child in a specific home or institution, in order for payments to be eligible for Title IV-E reimbursement, it must be clear that the commissioner of social services or OCFS retains full responsibility for the child's placement. A child entering care under an order directing placement in a specific foster care setting is eligible for Title IV-E funding as long as the commissioner or his or her agent was afforded an opportunity to be heard regarding the child's placement. Question and Answer #1 of "Frequently Asked Questions About the IV-E Final Rule" (Attachment 2) provides additional federal guidance to this issue.

Social services districts are advised to work closely with their family courts to clarify responsibility for any case in which care, custody and placement has been awarded to them without their involvement. As long

as it can be demonstrated that the social services district has full responsibility for the placement, e.g. they can transfer the child to another facility without the court's permission, ACF has indicated to OCFS that Title IV-E eligibility would not be jeopardized.

Title IV-E continues only so long as the court order continues the custody award with the commissioner. For example, if a court order expires prior to an order to extend the placement is issued, Title IV-E eligibility is lost until the custody order is renewed. Please note that when a court order is signed after the hearing date on which care and custody was awarded and the hearing date is documented on the court order, ACF review staff have previously accepted the hearing date as the effective date of that order.

b. Contrary To the Welfare Determinations (45 CFR 1356.21 (c))

When a court order removes a child from his or her home, the order must contain a determination to the effect that the removal from the home was in the child's "best interest". This requirement must be met in the first order effecting the removal, i.e. the first order issued by the court after the child is removed from his or her home or the order directing the removal when a petition has been filed prior to the removal. The "best interests" determination must be made in the initial removal order even if the court does not place the child into foster care at that time and, for example, places the child into detention or awards care and custody to a relative. Failure to secure a determination to the effect that the removal was in the child's "best interests" results in the child's ineligibility for Title IV-E for the entire foster care placement resulting from that removal. Prior to the recently amended federal regulations, states were allowed up to six months after the child's removal to secure the "best interests" determination if it was not done in the first order. States are no longer given this six month period to obtain such a determination. This is one of the initial placement conditions required by Title IV-E eligibility referenced on page 4 of this ADM.

The FCA and Social Services Law (SSL) provide that a determination must be made that it would be "contrary to the welfare" of the child for him or her to remain in the home. The SSA is clear that the determination is to be to the effect that the child's "best interests" have been met. In prior reviews and in federal Department Appeals Board (DAB) decisions, ACF has accepted alternative phrasing about the removal, such as it was "contrary to the welfare" of the child to remain in the home, or that the child required "placement and treatment" outside the home or the child was in "imminent risk" if left in the home as meeting the "best interest" requirement.

c. Reasonable Efforts to Prevent Removal Determination (45 CFR 1356.21(b)(1) (i))

When a child is removed from his or her home and placed into foster care, the court must make a determination in an order that the agency made "reasonable efforts" prior to placement to prevent or eliminate the need for removing the child from the home or to make it possible for the child to safely return to his or her home, or that reasonable efforts were not required. This determination must be in a court order. Failure by the court to make such a determination expressly in the order within 60 days of the child's removal will result in the child's ineligibility for Title IV-E

for the entire foster placement. This is one of the initial placement conditions required by Title IV-E eligibility referenced on page 4 of this ADM.

Prior to March 27, 2000, whenever the court determined that "reasonable efforts" were made to prevent the child's removal from the home or to return the child to the home, the "reasonable efforts" requirement was met as of the date of that determination. This is no longer the case. The new more restrictive requirement must be met.

d. Reasonable Efforts To Achieve Permanency (Section 1356.21(b)1 (ii))

Title IV-E now also requires that the agency secure a court determination that "reasonable efforts" were made to finalize the permanency goal for the child by the time the child has been in foster care for 12 months and for each 12 month period thereafter for as long as the child remains in care. Failure to secure such a determination on a timely and on-going basis results in the loss of Title IV-E eligibility until such a determination is made by the court. The child's first day of foster care for this requirement is defined by the "ASFA clock". The first day of placement occurs the earlier of the date of an adjudication of abuse or neglect or 60 days after the child's removal from the home. The first day of placement made under Article 3 or 7 of the FCA or made pursuant to a voluntary agreement would, by definition, be 60 days after the child's removal from the home.

The State statute and the New York State Office of Court Administration's (OCA) procedures facilitate the holding of a permanency hearing by incorporating the issuance of the extension of placement with the permanency hearing. The permanency hearing order must reflect the court's determination whether the agency made "reasonable efforts" to achieve the permanency goal.

A court may find that "reasonable efforts" to return the child home are not necessary under certain circumstance specified in the ASFA legislation. Among such circumstances are court determinations that the parent: has been convicted of murder or manslaughter of another child of that parent, subjected the child to "aggravated circumstances" as defined by state law, subjected the child to a felony assault, or has had his or her parental rights involuntarily terminated with respect to a sibling of that child (see FCA sections 1039-6).

ACF has advised states, in its commentary to the publication of the final rules issued January 25, 2000, that they will not be penalized in any review or audit for the failure of a court to make a "reasonable efforts" determination to finalize a permanency goal until March 27, 2001. This gives states a one year 'grace' period to implement this requirement prior to exposure to any negative fiscal consequences. Social services districts are required to secure such "reasonable efforts" determination to finalize a permanency goal in all appropriate cases regardless of the federal 'grace' period. Such determinations are required by State law and are supported by good casework practice. However, Title IV-E eligibility and claiming may continue during the 'grace' period (i.e. up through March 31, 2001) in cases where the court has not made an explicit determination of "reasonable

efforts", or if the court determines that "reasonable efforts" were not made but should have been made.

The "Redetermination of Title IV-E" checklist" (see attachment 1) addresses this and other relevant re-determination criteria.

e. Documenting Court Determinations (Section 1356.21 (d))

The federal child welfare regulations are not only explicit as to the time frames for securing court determinations regarding "contrary to the welfare" and "reasonable efforts", they also establish requirements where such determinations must be documented. The court must explicitly state its determinations in its orders. The only acceptable alternative, for audit purposes, is hearing transcripts. Districts should consult with their family courts on the availability and costs of securing transcripts if it is expected that copies of orders can not be retained in records that will be available for future audits. ACF will not recognize, and prohibits the use of, other forms of documentation to satisfy an audit, e.g. the use of "Nunc pro Tunc" orders (an order issued now for what was determined by the court but the court did not correctly state in the order originally issued) or orders containing only a check list in lieu of explicit determinations. "Nunc pro Tunc" orders are generally written a considerable period after the original order being corrected and ACF has doubted their reliability and rejected them when used in audit responses.

ACF has emphasized the need for the court to make individualized determinations. The court must document the evidence used for its determination. ACF has suggested that court orders which make specific references to a petition, including the date and docket number, that describes the case circumstances that form the basis of the court's determination are acceptable for documenting the evidence used in its determination. Petitions which are not clearly referenced in the orders will not be accepted by ACF to document the basis of the court's determination.

2. Voluntary Placement Agreements

For purposes of Title IV-E eligibility, voluntary placement agreements executed in accordance with SSL section 384-a provide legal authority for the first 180 days of placement or signing by all parties of the voluntary placement agreement. By day 180, a court must review the voluntary placement agreement and determine that continuation of the placement is in the child's "best interest." If this court determination is not made by day 180 of the placement, Title IV-E eligibility ceases for the remainder of the placement even if the order is secured later. This condition of eligibility has been unchanged by the federal regulations and ASFA. State procedures set forth in section 358-a address the issue of court review.

Placements made pursuant to voluntary placement agreements are subject to other federal ASFA requirements, including annual permanency hearings and court determinations regarding the agency's efforts to achieve permanency discussed above. Social services districts were notified of the revised recommended "Voluntary Placement Agreement Instrument" in 00 OCFs

ADM-2.

C. Eligibility for Aid to Dependent Children Criteria

Congress abolished the ADC Program with the passage of PRWORA in 1996 but retained its link to the Title IV-E program by requiring, as a condition of Title IV-E eligibility, that the child be eligible for ADC based on the state's ADC eligibility standards in effect as of July 16, 1996. This date is referred to as the "look back date", and is the same date as that used in determining eligibility for Medical Assistance under Title XIX.

In order to meet the ADC standard for Title IV-E eligibility purposes, each placement must meet the following conditions:

- the child meets the ADC eligibility criteria in effect on July 16, 1996 by using the household circumstances that existed in the month the removal was initiated either by the filing of a petition seeking a court order to remove the child from the home or the execution of a voluntary placement agreement by a parent or guardian; and
- the child was living with a specified relative in the month of the initiation of the removal, or in one of the six months preceding that month, as specified under the conditions of section 1356 21(k).

As a condition of Title IV-E eligibility for placements occurring after July 16, 1996 if the child can not be determined eligible for ADC, using the July 16, 1996 standards, there is no Title IV-E eligibility for that placement. ADC eligibility must be documented for time the child was removed from the home based on the following elements.

1. Age

In order to be eligible for both ADC and Title IV-E, a child must be under the age 18, or if over the age 18 but under the age 19 and in a secondary level of education and expected to graduate from high school before becoming 19. Case record materials such as petitions, court orders, birth certificates, Uniform Case Record (UCR) documents and progress notes have all been accepted as documenting the child's age. For children 18 years of age, copies of school records are needed to document that the child is expected to graduate high school prior to his or her 19th birthday.

2. Removal From the Home and Living With A Specified Relative

For purposes of Title IV-E eligibility, the date the child is removed from the home is the date a petition leading to the removal order was filed or the date a voluntary placement agreement was signed. Title IV-E also requires that the removal be from the home in which the child had been living with a specified relative defined in 18 NYCRR 369.1. The child is considered to have met this test if the case record documents that the child was living with such a relative in the month of removal or any of the six months preceding the month of removal, and the:

- custody was transferred from that relative to the commissioner of social services or OCFS, or

- custody was transferred from a relative with whom the child had been living within one of the preceding six months even if the relative was not living at the same address as the child at the time of filing of the petition or signing of the placement agreement. This situation includes instances where the child remains in the same home in which the child had been living with a relative who then becomes the child's kinship foster parent.

If a child is removed from the home of a relative with whom the child has been living for longer than six months but the custody is removed from another relative (usually a parent) and the child has not also been living with that relative during the six month period, there can be no Title IV-E eligibility. Attachment 3 to this ADM contains several case examples provided by ACF to help clarify the Title IV-E removal test. Districts are urged to document clearly in the case record the circumstances and living arrangements surrounding the child's removal and placement into foster care.

3. Deprivation Factor For ADC

Eligibility for ADC requires that the case record fully document that a child is deprived of parental support for at least one of four parental deprivation factors that were a part of the ADC eligibility requirements as of July 16, 1996, i.e.: death, absence, incapacity or unemployment of a parent. As with all eligibility factors, the deprivation factor must be documented for audit purposes. In previous audits, cases and payments have been disallowed because the record did not document the deprivation factor at the time of the child's removal from the home. In addition, with the repeal of the ADC program, WMS screens reflecting receipt of Temporary Assistance to Needy Families (TANF) or Safety Net (SN) assistance can not be used alone to establish whether the case has a deprivation factor. Districts may want to consider using Medical Assistance eligibility screens reflecting a deprivation factor if the case is related to the prior IV-A program.

The parental deprivation factor must exist at the time of the child's removal from the home to meet Title IV-E eligibility requirements. It must be independently documented in the case record regardless of the child's TANF or SN status on WMS. The facts of a given case must be documented and applied to the criteria for ADC categorical eligibility as of July 16, 1996. The following documents have been found acceptable by federal reviewers in the past and should be used to document the deprivation factor for Title IV-E purposes.

- a. Absence of a parent - Case record notations, such as the UCR, court petitions, and referrals to the child support unit which reflect a parent's absence from the home are accepted by federal reviewers.

- b. Incapacity of a parent - Documentation of receipt of SSI, various disability benefits or medical verification of a condition limiting parental functioning or ability to earn income are accepted by federal reviewers.

c. Death of a parent - Case record materials, such as the UCR, court records, death certificate, obituary or receipt of survivor's benefits are acceptable to document this deprivation factor.

d. Unemployed parent - This deprivation factor has complex and technical requirements unless at least one parent is in receipt of Unemployment Insurance Benefits (UIB). Receipt of UIB automatically qualifies a case for the unemployed parent deprivation factor. In all other circumstances, local social services districts should refer to 92 ADM-7 for further information on documentation of this factor.

4. Financial Eligibility For ADC

Social services districts can no longer rely on WMS screen prints to reflect a child's active status in an assistance case in the month of removal from the home to document ADC financial eligibility for Title IV-E purposes because Title IV-E eligibility is based on the financial eligibility criteria in effect on July 16, 1996, not on the current TANF financial eligibility criteria. The financial eligibility test can be met in one of the three following ways.

a. Family in receipt of TANF or Safety Net (SN) Assistance

When a child has been removed from the home of a parent in receipt of TANF or SN benefits, social services district staff must access the existing ABEL Budget for the public assistance case. While using the ABEL Inquiry feature, staff must calculate the ADC financial eligibility by applying the income from the existing ABEL budget to generate a 'scratch-pad budget' with a "from date" of 07-01-96 and a "to date" of 07-31-96 in the budget worksheet. This will allow ABEL to calculate a budget pursuant to the July 1996 ADC standard. A copy of the resulting 'scratch-pad budget' screen must be printed and retained in the case record.

NOTE: An ABEL budget will include in its calculations a determination of the requisite 185% of the standard of need as well as a determination of eligibility for an ADC grant as of July 16, 1996. Both steps are required to meet the ADC financial eligibility test.

b. Family Not On Public Assistance

An ABEL budget calculation must be done for all removals from parental homes which are not in receipt of Public Assistance. For such cases, social services districts must secure adequate income and needs verification to do such a budget to establish ADC eligibility. If it is readily apparent in case record documentation that the case will not meet the ADC criteria, as the reason the case is ineligible for Title IV-E, it is not necessary to do a budget but a comment should be recorded explaining this. Please refer to 97 LCM-38 for further discussion on budgeting these cases.

c. Children Removed From Homes Other Than Parents

A child who at the time of removal is living with a relative (as defined in 18 NYCRR part 369 (1)(b)) who is not the child's parent or step-parent and the child has no income or resource in his or her own name can

be deemed to pass the ADC test without a budget computation. Documentation of the living arrangements and the inquiries demonstrating that the child had no income or resources in his or her own name must be kept in the case record. A child in such a living circumstance who does have income and/or resources in his or her own name will require an ABEL budget calculation based on the child's income to demonstrate ADC financial eligibility.

5. Citizenship/Qualified Alien Status

The applicant must be a U.S. citizen or qualified alien as defined under the PRWORA. The "TANF Qualified Non-citizenship Chart" (attachment 4) should be used to identify qualifying aliens by referring to those statuses listed as eligible for TANF.

C. TANF-EAF Eligibility

Social services districts must still do eligibility determinations for TANF-EAF pursuant to 00 OCFS ADM-3 regardless of the Title IV-E eligibility status of the case. The federal regulations do not allow for claiming of TANF-EAF funds for items (e.g. room and board) eligible for Title IV-E funding, but the TANF-EAF funds are available for services (e.g. tuition) not funded by Title IV-E.

D. Provider Eligibility (45 CFR 1356.30)

Only payments for foster care room and board issued to providers who are finally approved or certified under State standards can be claimed for Title IV-E reimbursement. Payments made to, or on behalf of, homes issued emergency approvals or certifications are not considered final, regardless of the reason for the emergency status. Thus such homes are not to be claimed as Title IV-E until the first of the month in which the final approval or certification is granted. 00 OCFS LCM-25 contains instructions for claiming payments to homes in emergency approval or certification status.

The prohibition on claiming Title IV-E funds for payments to foster care homes in emergency approval or certification status applies only to room and board payments. Payments for clothing, child care, and transportation for the child's visits to his or her home remain eligible for Title IV-E funding, as do administrative expenditures, provided the case is otherwise eligible and authorized for Title IV-E.

E. Title IV-E/Title IV-D Requirements

Federal statute requires assignment of support rights for Title IV-E foster care cases. All Title IV-E foster care cases must be referred to the social services district IV-D Unit unless such a referral will adversely affect the health, safety or welfare of the foster child or other persons in the applicant's household, or if such a referral will impair the ability of the child to return home (18 NYCRR 422.4 (a)(1)). Since there is an assignment in effect for Title IV-E cases, the use of the DSS-2860, the Child Support Enforcement Referral, is appropriate. Please refer to 99 ADM-5 for further discussion of child support issues.

F. Supplemental Security Income (SSI) Eligibility for Foster Children

Social services districts should screen those children determined to be ineligible for Title IV-E foster care, for SSI eligibility. The SSI benefit level for children in foster care is the "living with others" arrangement for that program. Any child who was eligible for Title IV-E foster care but then loses eligibility should also be screened for SSI eligibility.

There is no local share in the SSI monthly benefit payments. If the monthly foster care maintenance costs up to the Maximum State Aid Rate (MSAR) for an SSI child exceeds the monthly payment, the balance is met through the capped Family and Children Services Block Grant and local revenues. Administrative costs for SSI foster care placements are shared 50% by the federal agency as a result of the approved local cost allocation plan.

Title IV-E foster care reimbursement differs in that it reimburses 50% of the cost of room, board and clothing, regardless of the cost. Therefore, social services districts should consider the overall Title IV-E reimbursement versus the SSI standard amount when determining which program would be most cost beneficial for a foster child who would be eligible for either program. As a general rule, whenever a child is in a group foster care program, Title IV-E will provide the greater reimbursement.

G. Re-determination of Title IV-E Foster Care

Title IV-E eligibility must be reevaluated at least every 12 months and whenever circumstances that may effect the eligibility status of the case occurs. Circumstances affecting IV-E eligibility during the course of a foster care placement include:

1. Age. When a child turns 18 and is not in a secondary level of education and expected to graduate by age 19, or child turns 19 regardless of education level, Title IV-E eligibility ends.

2. When legal authority for placement ends, i.e. care and custody (or care and guardianship) awarded to the commissioner of social services or OCFs ceases, Title IV-E eligibility ends until legal authority resumes by a court order awarding care and custody to the commissioner.

3. ADC deprivation factor ceases. If there is no parental deprivation factor existing in the home the child was removed from, Title IV-E eligibility ceases until a deprivation factor can be documented for that home.

4. Financial eligibility continues only for so long as the costs of foster care exceeds the income available to the foster care child.

5. For a foster care child in care for 12 or more months after the first day in foster care, based on the "ASFA clock", a court must determine that the agency has made reasonable efforts to finalize the permanency goal for the child. This determination must be made every 12 months after the first day in foster care, as well. Failure to secure a court order with such a determination makes the case ineligible for Title IV-E until such

determination is made by the court.

IV. TITLE IV-E ADOPTION ASSISTANCE

Federal Title IV-E adoption assistance payments are available for children who meet the federal eligibility criteria for the former Title IV-A (ADC) program in effect in the State on July 16, 1996, Title IV-E Foster Care, or the SSI Program, and who satisfy the standards for a child with special needs (see SSA section 473 (c)).

Title IV-E adoption assistance payments have been available for eligible children in New York who were adopted on or after October 1, 1980. Attachment 5 provides definitions of the terms used for purposes of determining Title IV-E eligibility for adoption subsidy cases.

A. Categorical and Financial Eligibility

1. Categorical Relationship

Title IV-E reimbursement is available for children who, at the time when the adoption petition was filed, are eligible for either the Title IV-E foster care or SSI program or the former ADC program as defined in the State Plan as of July 16, 1996 and who meet the criteria of a child with "special needs" (see Definitions in Attachment 5).

Title IV-E, SSI or ADC relatedness of the child must be reviewed when the adoption petition is filed. Although a re-determination for Title IV-E Foster Care may have been done within six months prior to the filing of the adoption petition, a specific review for Title IV-E, SSI or ADC must be completed at this point. Eligibility for one of those programs must be documented in the child's case record. The LDSS-3921 "Eligibility for Title IV-E Adoption Assistance" form must be completed.

For adoptions finalized on or after October 1, 1997; when a Title IV-E adoption has been dissolved or the adoptive parent(s) die, Title IV-E eligibility for the case will resume if and when the child is re-adopted without the need to do another eligibility determination for ADC or SSI relatedness purposes, but a determination of special needs eligibility must be documented for the new adoption.

2. Financial Eligibility

a. Income of Adoptive Parent

There is no means test for the adoptive parent(s) to determine eligibility for Title IV-E Adoption Assistance payments. However, OCFs regulation 18 NYCRR 421.24 sets forth the procedure for the consideration of income in determining the amount of subsidy to be granted.

b. Income - Child

At the time the adoption petition is filed, the social services district must document in the UCR that the child is financially needy through their eligibility for the ADC program standards as of July 16, 1996, the Title IV-E Foster Care Program, or the SSI Program.

3. Programmatic Eligibility

a. Federal Requirements

Federally reimbursable adoption assistance is available for certain Title IV-E Foster Care, ADC, or SSI eligible children who have been adopted. These children may receive such adoption assistance if:

- the child has been determined to be a child with "special needs". Section 473(c) of the SSA provides that in order for a child to be considered a child "with special needs", they must meet certain requirements as defined in Attachment 5; and
- adoption assistance payments are made pursuant to an adoption assistance agreement.

An adoption assistance subsidy agreement is required in each case in order to receive federal reimbursement and must be signed by all parties and in effect at the time of the final court decree of adoption. It is also required that the amount of the adoption assistance payment is to be determined through the Agreement with consideration given to the circumstances of the parents adopting and the needs of the child being adopted. The adoption assistance payments may not exceed the foster care maintenance payments that would have been paid had the child been in a family foster home.

The amount of the adoption assistance payment can be adjusted up to the maximum allowable payment, with the concurrence of the adoptive parents, when the projected needs of the child change. Any maintenance subsidy payments paid above 100% of the foster care board rate are not subject to federal reimbursement. The adoption subsidy agreement must be completed and signed by all parties before the adoption is made final for the payments to be eligible for Title IV-E reimbursement.

b. Non-Recurring Adoption Expenses

The Tax Reform Act of 1986 amended Title IV-E to provide for federal reimbursement to the states to pay for non-recurring adoption expenses. Chapter 315 of the Laws of 1988, which added Section 453-a of the SSL, enacted the federal provisions for payment of non-recurring adoption expenses.

Social services districts must make payments for non-recurring expenses incurred by or on behalf of the adoptive parents. Such expenses must be related directly related to the legal adoption of a child with special needs when such child was adopted through an authorized agency. The child does not need to be Title IV-E eligible for reimbursement. The payments shall be made by the social services district either to the adoptive parents directly, to the authorized agency on behalf of the adoptive parents, or to an attorney on behalf of the adoptive parents. Reimbursement is limited to a one time payment of up to \$2,000.

c. Relationship of State Requirements to the Federal Requirements

There are similarities between the State and federal requirements. However, eligibility for an adoption subsidy is more broadly defined by New York than under the federal law. Therefore it is necessary to distinguish between the two and identify the limits of federal participation.

There are three areas of Title IV-E adoption subsidy eligibility that require definition:

(1) Age - Federal participation is allowed up to the child's 18th birthday and it may be continued only if it is determined that the child has a handicapping condition that warrants continuation beyond age 18, and then only to the child's 21st birthday (See SSA section 473(a)(4)). The payments must continue as long as the adoptive parent remains financially responsible for and provides any support for the child.

SSL section 453(1)(a) and 18 NYCRR 421.24(c)(18) provide for State participation in the subsidy for a child up to age 21 when he or she is in receipt of subsidy as long as the adoptive parent remains financially responsible for and provides any support for the child. In cases where federal reimbursement is lost at age 18 as a result of the handicapping condition not warranting continued payment to age 21, a State reimbursable subsidy must be authorized until the child attains the age of 21, if the child was eligible at the time of the adoption and State eligibility otherwise continues (See SSL section 453(1)(c)).

2) Initiation of Subsidy - Generally, adoption subsidy payments for children begin only after an adoption subsidy agreement has been signed, and the adoption has been finalized. Except in those limited cases described in the regulations, where the foster parent is to become the adoptive parent, the foster care payments will continue up to the time the adoption is final except in limited situations in cases the foster. For treatment of subsidies for children who will be adopted by parents other than foster parents refer to 18 NYCRR 421.24(c)(2).

NOTE: Upon the death of both adoptive parents, Title IV-E subsidy payments eligibility does not continue. However, State/local subsidy payments can replace the Title IV-E subsidy, and continue to be made to the court appointed legal guardian(s) of an adopted child until the child attains the age of 21 or is subsequently adopted.

Also, for a child who was adopted and receiving Title IV-E adoption assistance, and subsequently enters foster care, there is no automatic Title IV-E financial eligibility for that child's foster care stay. Eligibility is determined based on the adoptive family's income and resources. However, if the child is subsequently legally freed again, the child retains his or her eligibility for Title IV-E adoption assistance.

(3) Special Needs - In order to receive federal reimbursement, a child must be determined to have "special needs". Children meeting the State's definition of a handicapped or hard-to-place child as defined in 18 NYCRR 421.24(a)(2) and (3) may also be eligible for federal Adoption Assistance. However, those children receiving a subsidy solely on the basis of having been freed for adoption for at least six months without being placed in an adoptive home (OCFSS regulation 18 NYCRR 421.24(a)(3)(i) and (ii)) are not eligible for federal Title IV-E Adoption Assistance.

The Title IV-E Adoption Assistance Eligibility Form (LDSS-3912) remains the required form for determining eligibility for the program.

Federal reimbursement became available as of April 1, 1982, for eligible children adopted after October 1, 1980. The State adoption subsidy program continues to reimburse social services districts for expenditures made for children who are eligible for State subsidies and adopted on or after October 1, 1980, but who do not meet federal eligibility requirements.

4. Annual Review

The social services district shall determine on an annual basis whether the adoptive parents continue to be legally responsible for the child's support, and whether the child is in fact in receipt of support from the parents (See 18 NYCRR 426.5(e)). The result of the annual review must be documented in the case record.

If the adoptive parents are no longer legally responsible for the support of the child or the child is no longer receiving any support from such parents, no further adoption subsidy payments is to be made (SSL Section 453(1)(c)).

NOTE: There is no review of income or resources eligibility for the parents or child for the continuation of adoption subsidy.

5. Authorization

The Services Authorization (LDSS-2970) must be used to authorize both Adoption Assistance and Adoption Services expenditures.

An authorization may only be generated for a six-month period (due to present system limitations). However, once eligibility has been established, neither the categorical relationship nor the financial eligibility need to be re-determined. If it is determined at the annual review that the adoptive parents are no longer legally responsible for the child or the child no longer is in receipt of support from the parents, the payments must be discontinued. The conditions for continuation of a Title IV-E or State and local subsidy should be reviewed prior to an authorization.

6. Medical Assistance (MA) or Medical Subsidy

A child who is eligible for and in receipt of Title IV-E Adoption Assistance payments is automatically eligible for MA coverage.

When a Title IV-E Adoption Assistance payment is authorized, federal law and regulation require that MA must be provided for the adopted child. State law also requires provision of MA for Title IV-E eligible children (SSL Section 453(1)(b)).

When a child whose guardianship and custody has been committed to a voluntary authorized agency is adopted with a Title IV-E subsidy, the social services district must authorize an MA case for the child.

State regulations require that, when evaluating what medical coverage is available to a child being adopted, eligibility for State medical subsidy should only be considered if a child is not MA eligible.

There is no federal reimbursement for the State medical subsidy program.

However, since federal reimbursement is available for MA, eligibility for MA should be determined in all instances where a child qualifies for a medical subsidy. If the child is MA eligible, a State medical subsidy must not be authorized. However, if a handicapped child loses MA coverage before age 21, then the medical subsidy is authorized up to age 21 if the child was eligible for MA at the time of adoption.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) includes provisions covering MA for Title IV-E and some other handicapped adopted children, as follows:

(a) A Title IV-E Adoption Assistance payment is not required for the purpose of automatic eligibility for MA. Thus, there is no need for a "token" Title IV-E adoption assistance payment.

(b) The requirement that the adoption be finalized in order to grant MA was eliminated as of October 1, 1986. MA may be automatically provided to those children determined to be Title IV-E eligible as soon as the adoption assistance agreement has been signed by the respective parties and approved by OCFS.

(3) Non-Title IV-E children for whom there exists special medical or rehabilitative needs which make placement for adoption without MA coverage difficult may be eligible for MA when a non-Title IV-E adoption subsidy agreement is in effect. In order to qualify under this provision, the child must have been in receipt of, or eligible for, MA in the three month period prior to the adoption subsidy agreement being signed.

This COBRA provision extends MA eligibility to handicapped children who are not eligible for Title IV-E Adoption Assistance, without regard to the income and resources of the adoptive parents.

NOTE: There is no review of income or resources eligibility for the parents or child for the continuation of the medical subsidy, or Medical Assistance (that is, when eligibility for MA is provided pursuant to a Title IV-E adoption subsidy agreement or under the provisions of COBRA).

V. REQUIRED ACTION

A. Foster Care

1. Eligibility Process

The following actions are necessary to determine the eligibility status for all children being placed in foster care:

a. An application must be made by the child's parents, other relative, other caretaker, or by an authorized representative of the agency having the care and custody or custody and guardianship of the child. The DSS-2921 (WMS Common Application Form) must be completed and signed.

b. Eligibility should be determined by the social services district within 30 days of the date of application using the "Initial Title IV-E Foster Care Checklist".

NOTE: If a child ceases to be eligible for Title IV-E, the worker should then review the case to determine if the child could be considered for the Supplemental Security Income (SSI) program. If there are conditions which may render the child eligible for SSI, an application for SSI should be submitted to the Social Security Administration.

c. Re-determinations must be done every 12 months to assure continuing eligibility for Title IV-E. Part of the re-determination is to document that a deprivation factor, as defined under the former IV-A ADC program as in effect on July 16, 1996, continues in the home from which the child was removed. If this can not be documented, Title IV-E eligibility ceases. Eligibility can resume if a deprivation factor can be established at a later date.

2. Medical Assistance (MA)

Foster children who meet the requirements of Title IV-E are automatically eligible for MA.

For all other children in foster care, eligibility for MA must be determined in accordance with eligibility standards as issued by the NYS Department of Health.

3. Systems Implications

(a). Case Opening Processing - Cases and individuals are registered in WMS via the Application Registration process.

The circumstances for a child who would have been eligible for ADC if an application had been made in the month of placement must be documented in the case record.

Individuals determined Title IV-E eligible will be encoded with an eligibility of code "02" on WMS.

Individuals eligible for Title IV-E are automatically Title XIX (MA) eligible and must have a corresponding non-services case (ADC-case type 13-Upstate Only) opened for purposes of MA coverage. For New York City, SERMA processing will provide appropriate MA coverage. In those social services districts where Income Maintenance or MA staff are responsible for the non-services processing, Services staff should make referrals for processing using current procedures. In social services districts where Services staff are responsible for processing the non-services cases, the corresponding ADC case-type 13 should be opened.

Individuals who do not meet Title IV-E eligibility requirements need an appropriate Services eligibility determination. Non-Title IV-E eligible children must have a separate MA Only application processed for determination of eligibility for Title XIX (MA). If the child is MA eligible, the district should open the MA case (Case Type 20 for non-Title IV-E) and encode on WMS with an eligibility code of 08-MA.

Each child receiving foster care must be tracked on the CCRS through the Supplemental Registration process. All appropriate Assessment Service Plans, movement and legal activities must be reported.

(b). Recertification/Re determination-Individuals who continue to be Title IV-E eligible must be recertified in the prescribed manner. Individuals who are no longer Title IV-E eligible must be recertified with an appropriate eligibility code other than 02 (FCAA).

(c) Cases with Dual Eligibility for Title IV-E and TANF-EAF

Pursuant to instructions in 00-OCFS ADM-3, all foster care cases are to be reviewed for TANF-EAF so that services not eligible for Title IV-E reimbursement may be reimbursed under TANF-EAF if the case is determined eligible. Cases determined to be eligible for both Title IV-E and TANF-EAF must be encoded as 08 and 08-E in the direct services portion of the services authorization document. Purchase of service lines eligible only for TANF-EAF funding, for instance, tuition (POS type 64 or 65) and room and board payments (POS type 62) only while undergoing emergency approval and certification pursuant to OCFS policy as found in 18 NYCRR Section 443, should be encoded with an "E" suffix.

B. Adoption Assistance

a. WMS/MMIS Instructions

At present it is necessary to establish a non-services case to provide MA to adoption assistance individuals in a service case.

When children meet Title IV-E Adoption Assistance criteria, case Type 20 must be opened.

When children do not meet the Title IV-E criteria, full financial determination of eligibility for MA (with federal participation under Title XIX) is necessary. These children would be opened as case Type 20.

NOTE: Only those children eligible for MA are to be included in MMIS and assigned an MA ID Card.

b. Services Systems Instructions

1. Case Opening Processing

The process for opening a case for adoption assistance depends on whether the case was opened prior to or subsequent to finalization.

(a) Prior to Finalization - Processing a Subsidy - the child, as a family (case) of one, is opened in the Services component of the Welfare Management System. The eligibility of the child will depend upon the foster care status of the child. If the adoptive parents are certified foster parents and the child is Title IV-E eligible, eligibility code 02 (Title IV-E) should be entered on the Services Application and the corresponding Non-Services case (Case Type 13) should be opened for MA coverage. In this instance, maintenance and administrative costs would be Title IV-E foster care reimbursable. If the prospective adoptive parents are not certified or approved foster parents or the child is not Title IV-E eligible, the child must have a separate MA Only application processed for determination of eligibility for Title XIX (MA). If the child is MA eligible, open the MA case and encode the Services Application with an eligibility code of 08 (Case Type 20). If the child is not Title XIX eligible, a Services income eligibility determination should be made and if Income Eligible, the Services Application encoded with an eligibility code of 14-Income Eligible. Complete case processing with Full Data Entry (FDE), completion of the Services Financial Eligibility Display/Turnaround (SFED/T) authorizing the adoption subsidy as a purchase of service and supervisory review and approval. Each child receiving Adoption Assistance must be tracked via the CCRS Supplemental Registration process. All appropriate Assessment Service Plans, movement, adoption, and legal activities must be reported.

When the adoption is finalized, the WMS Services case is closed using reason code 573-Adoption Subsidized or code 574-Adoption Not Subsidized. The corresponding non-services Case Type (13 or 20) must also be closed.

(b) Subsequent to finalization - the child, as a family of one, would be opened in the Services component of the Welfare Management System using a new case number, the child's adoptive name and a new client identification number.

If the child is Title IV-E eligible, enter 02 as the eligibility code. If Title IV-E eligible, open the non-services Case Type 20 for MA coverage.

If the child is not Title IV-E eligible, use the appropriate eligibility code.

No CCRS Supplemental Registration is required.

2. Review

Once eligibility for Adoption Assistance payments under Title IV-E is established, annual reviews are necessary. The only issue in these reviews is to verify that the adoptive parents continue to be legally responsible for the support of the child, and that the child continues to receive support from the adoptive parent(s). This is not a review for income eligibility or subsidy change.

VI. EFFECTIVE DATE

This Administrative Directive is effective immediately.

Melvin I. Rosenblat
Deputy Commissioner
for Administration

William Baccaglioni
Director
Strategic Planning
and Policy Development