



# Bulletin

**NUMBER**

#15-68-04

**DATE**

April 6, 2015

**OF INTEREST TO**

County Social Services  
Directors

Tribal Social Services  
Directors

County Social Services  
Supervisors and Staff

Title IV-E Income  
Maintenance Supervisors

Title IV-E Coordinators

**ACTION/DUE DATE**

Read information and  
prepare for implementation

**EXPIRATION DATE**

April 6, 2017

## Title IV-E Foster Care Update

**TOPIC**

Title IV-E foster care clarifications.

**PURPOSE**

To inform county and tribal agencies of Title IV-E foster care regulations.

**CONTACT**

For questions regarding Title IV-E foster care policy:

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**SIGNED**

JAMES C. KOPPEL

Assistant Commissioner

**TERMINOLOGY NOTICE**

The terminology used to describe people we serve has changed over time. The Minnesota Department of Human Services (DHS) supports the use of "People First" language.

## Introduction

In March 2013, the Children's Bureau, Administration for Children and Families (ACF), conducted a primary review of the Minnesota Department of Human Services (DHS) Title IV-E foster care program. Another primary review will be conducted in 2016. The Title IV-E foster care eligibility review will:

- Determine whether Minnesota's Title IV-E foster care program is in compliance with eligibility requirements, as outlined in 45 C.F.R. §1356.71 and section 472 of the Social Security Act [the (Act)]
- Validate the basis of state financial claims to ensure that appropriate payments were made on behalf of eligible children.

The Children's Bureau determined that Minnesota's Title IV-E foster care program was in substantial compliance with federal eligibility requirements in 2013. To be in substantial compliance, the error rate must be 5 percent or less. Of 80 cases selected for review, four or fewer cases had to be found not to be in compliance.

This bulletin is a combination of federal regulations and Minnesota statute requirements. Not all federal requirements are reflected in state law. This bulletin clarifies Title IV-E requirements.

## Adam Walsh background studies

To receive federal Title IV-E funds, state agencies are required to have procedures for conducting criminal records checks of prospective foster and adoptive parents. This includes fingerprint-based checks by the National Crime Information Database (NCID), and procedures for checks of Child Abuse and Neglect Registries (CANR) on prospective foster and adoptive parents, including all adult members of their households. [45 C.F.R. §§ 1355.20, 1355.30, and 1356.71 (d)(1)(iv)]

A fingerprint-based check of the National Crime Information Database and check of the Child Abuse and Neglect Registry in Minnesota, and in any state in which a prospective foster parent, or any other adult living in the home, resided in the preceding five years is required prior to licensure for foster care. Title IV-E foster care eligibility requires documentation of compliance with fingerprint-based checks of the National Crime Information Database for homes initially licensed on or after Oct. 1, 2008.

In Minnesota, tribes who license or approve family foster homes are not required to comply with Adam Walsh requirements unless the tribe:

- Has a direct Title IV-E plan with the federal government

- Has a Title IV-E Foster Care Placement, Care and Supervision agreement with the Minnesota Department of Human Services, county agencies, or
- Is licensed under Minnesota Rules, parts 9545.0755-9545.0845 (also known informally as Rule 4) as a placing agency
- Has a Title IV-E Agreement with the Minnesota Department of Human Services (referred to in the Title IV-E Agreement as the State).

The Minnesota Department of Human Services currently has Title IV-E Agreements with four tribes in Minnesota: White Earth, Leech Lake and Mille Lacs Bands of Ojibwe, and Red Lake Nation.

A local or tribal social services agency, which has a Title IV-E Agreement in place, may not claim Title IV-E funds for an eligible child placed in a tribally licensed or approved home until the home meets Adam Walsh criminal records check requirements. If a local social service agency intends to claim Title IV-E reimbursement for a placement, it should work with the tribe to ensure that Adam Walsh background checks are completed for the tribally licensed or approved home.

## **Children in foster care who receive Supplemental Security Income (SSI)**

A child may be eligible for SSI and Title IV-E foster care benefits concurrently, as both are intended to meet a child's maintenance needs.

When making the Aid to Families with Dependent Children (AFDC) Relatedness determination of Title IV-E, if a child is considered an SSI recipient in the eligibility month, they meet AFDC Relatedness financial need criteria for both income and resources. However, the agencies must still establish that a child meets an AFDC deprivation factor for the eligibility month.

Certain other individuals who live in the same household as the child are excluded from the family unit because they are not eligible for the AFDC program due to other provisions of the Act. For example, AFDC regulations at 45 C.F.R. §§ 233.20(a)(1)(ii) and 233.20(a)(3)(x) exclude the needs, income and resources of individuals who are eligible to receive benefits under Title XVI of the Act [legislative authority for Supplemental Security

Income] in determining the needs of an AFDC assistance unit. These individuals are not considered part of the assistance unit for determining financial need.<sup>1</sup>

## **Contrary to the welfare and best interest determination**

A judicial determination that continuation of a child in the custody of the parent is contrary to their welfare (and placement is in their best interest) must be made for children placed under court order, and for those placed under a Voluntary Placement Agreement as follows:

- Court ordered placements: For children placed by court order, a judicial determination that continuation of a child in the custody of the parent or caretaker is contrary to a child's welfare (and placement is in their best interest) must be made at the first judicial ruling that sanctions (even temporarily) removal from the home. This includes ex parte orders for emergency protective care, and orders issued at emergency protective care hearings, delinquency hearings and tribal court hearings.
- Voluntary placements: For children under a Voluntary Placement Agreement, the judicial determination with the contrary to welfare or best interest must be made within 180 days of a child's removal.

The court order should address the contrary to the welfare or best interest determination against the legally responsible person/s.

The parent/s or specified relative who has legal responsibility of a child at the time of removal should be named as the subject of the judicial determination, and that to remain in the home would be contrary to a child's welfare, and that removal is in their best interest. Generally, the person with legal responsibility is the parent or other person with legal custody.

## **Reasonable efforts to prevent placement determination**

There must be a court order within 60 days of a child's removal that contains a judicial finding that reasonable efforts to prevent removal were made. A child does not meet Title IV-E eligibility until the first of the month that the reasonable efforts to prevent finding is made.

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<sup>1</sup> See Administration for Children and Families, Title IV-E Foster Care Eligibility Review Guide, December 2012, pages 40-41, at [Title IV-E Review Guide](#)

An agency cannot claim Title IV-E maintenance payments until a reasonable effort to prevent removal determination is made. This is a policy clarification based on the “Title IV-E Foster Care Eligibility Review Guide.”

Although 60 days is allowed, Title IV-E maintenance cannot be claimed until the judicial determination is made. For this reason, it is best practice that the judicial finding regarding reasonable efforts to prevent removal is made in the first court action.

If the reasonable efforts to prevent removal finding is not obtained within 60 days from a child’s removal, they cannot be Title IV-E eligible for the duration of the out-of-home placement episode.

A child is eligible under Title IV-E when all eligibility criteria pertaining to a child’s removal from the home are met. A Title IV-E agency may claim Title IV-E maintenance from the first day of placement in the month in which all initial Title IV-E eligibility criteria are met. [Children’s Bureau “Child Welfare Policy Manual” (CWPM) 8.3A.15, question 1] For example, if a child’s foster care placement and judicial finding of contrary to the welfare occurs on November 10, and the finding of reasonable efforts to prevent removal occurs on January 6, Title IV-E eligibility becomes effective, and Title IV-E foster care maintenance payments can be made for the period that begins January 1 for the otherwise eligible child.<sup>2</sup>  
**Title IV-E maintenance claims cannot start until January 1.**

## Specified relatives

Under 45 C.F.R. § 233.90 (c) (1)(v), a specified relative is defined as any relation by blood, marriage or adoption who is within the fifth degree of kinship to a dependent child, even if the relationship ends by death or divorce. This includes great-great-grandparents and first cousins once removed (children of first cousins). Accordingly, for the purpose of determining Title IV-E eligibility, any otherwise eligible child who is removed from the home of a relative, who is within the fifth degree of kinship to a child, will be eligible for assistance under Title IV-E.<sup>3</sup>

If legal responsibility is transferred prior to the removal/placement of a child into out-of-home care, this person would be considered the removal home if they meet the AFDC

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<sup>2</sup> See Administration for Children and Families, Title IV-E Foster Care Eligibility Review Guide, December 2012, page 29, at: [Title IV-E Review Guide](#)

<sup>3</sup> See Administration for Children and Families, Child Welfare Policy Manual, 8.4 Title IV-E, General Requirements, AFDC Eligibility at: Child Welfare Policy.

specified relative criteria for Title IV-E eligibility determination purposes for the current placement episode.

To be a non-parent relative caretaker, a person's relationship to a child must be as a:

- Stepparent
- Grandparent, great-grandparent, great-great-grandparent, or great-great-great-grandparent
- Sister or stepsister
- Brother or stepbrother
- Aunt, great-aunt, or great-great-aunt
- Uncle, great-uncle, or great-great-uncle
- Nephew or niece
- First cousin or first cousin once removed
- Spouse of any person listed above, even if the marriage terminated in death or divorce.<sup>4</sup>

## **Removal from the home of parent/s, specified and non-specified relatives**

For the purpose of determining Title IV-E eligibility, a child must be “living with” and “removed from” the same specified relative, and AFDC eligibility must be based on that relative’s home.

The removal home for Title IV-E purposes is always considered:

- The legal parent/s, or
- Non-parent specified relative who has legal responsibility for a child.

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<sup>4</sup> July 1996, “Combined Manual,” AFDC provisions: 0013.03.09 AFDC Caretakers Eligible for Benefits.

## **Legal parent/s**

Under Title IV-E, the home from which a child is removed is the home of the legal parent/s, the subject of a judicial finding of contrary to the welfare, or who signed a Voluntary Placement Agreement with a Title IV-E agency.

Legal fathers may be considered the AFDC removal home when they sign a Voluntary Placement Agreement, or are the subject of a contrary to the welfare statement or best interest determination. Legal fathers are named on a child's signed certified birth certificate, or signed a Recognition of Parentage (ROP), or adjudicated as a child's father by the court. Alleged fathers are not legal fathers and may not be considered the removal home.

## **Non-parent specified relatives**

At the time of removal, if a child is living with a non-parent specified relative who has legal responsibility at the time a child is judicially removed, the AFDC eligibility determination is based on the home of the non-parent specified relative.

There may be individuals who have legal authority for a child who do not meet the AFDC specified relative criteria, including the following examples:

- A father let his child live in the home of his girlfriend for one year; the father's girlfriend was given legal responsibility by court order. The child was removed from the girlfriend's home. The contrary to the welfare or best interest determination addressed in the first court order has the girlfriend listed as the subject of the judicial determination. The girlfriend's home would be considered the removal home. The father's girlfriend does not meet the AFDC specified relative definition. The child has been living with and removed from the legally responsible person who is not considered a specified relative.
- A child was informally residing with his grandparents for eight months and was removed from the grandparents' home; the grandparents meet the specified relative AFDC relative definition, but not the removal home definition. No legal responsibility for this child was transferred to the grandparents. The contrary to the welfare/best interest and reasonable efforts to prevent statement addressed in the first court order has the parent/s listed as the subject of the judicial determination. The child has not been living with and removed from the legally responsible person/s within the eligibility month, or six months prior to the eligibility month.
- A child has been living with his father's first cousin for seven months; the father signed a valid Delegation of Parental Authority (DOPA), meeting requirements of Minnesota Statutes, section 524.5-211, giving his first cousin care and custody of the child; first cousin has legal authority for this child. The child was removed from the cousin's home; the removal home was the cousin. The father's first cousin is the child's first cousin once removed and is considered a specified relative by AFDC policy. The child has been living with and removed from the legally responsible person, the father's first cousin within the eligibility month, or six months prior to the eligibility month window.

## **Americans with Disabilities Act (ADA) Advisory**

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