Child Welfare Policy Manual

Questions & Answers

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

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

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

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

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

- **Source/Date:** ACYF-CB-PIQ-88-04 (7/19/88)
- **Legal and Related References:** Social Security Act - section 472 (c)

2. Question: An inquiry from a State described a situation in which a local governmental unit is operating a residential child care facility that consists of several cottages on a common plot of land. One of the cottages, licensed by the State, has a licensed capacity of 25 or fewer children. Another cottage is also licensed, but for more than 25. The question is: are the costs of care in the cottage of 25 or less eligible

for Federal financial participation (FFP), since it has an individual license and is not considered, for purposes of licensing, as a part of the other cottage housing more than 25 children?

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

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

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

- **Source/Date:** ACYF-CB-PIQ-88-04 (7/19/88)
- **Legal and Related References:** Social Security Act - section 472 (c); House of Representatives Conference Report No. 96-136 and Senate Committee Report No. 96-336

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

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

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

- **Source/Date:** ACYF-CB-PIQ-82-10 (8/11/82); ACYF-CB-PIQ-88-03 (4/11/88); 10/25/16
- **Legal and Related References:** Social Security Act - sections 472; 45 CFR 1355.20

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

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

- **Source/Date:** ACYF-CB-PA-97-01 (7/25/97)
- **Legal and Related References:** Social Security Act - section 472 (c)(2).

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

Answer: Not necessarily. A facility that has locked living units may meet the Federal definition of a child care institution enabling the State to claim title IV-E on behalf of a child. The statute at section 472 (c)(2) of the Social Security Act requires the State to place the child in a child care institution that meets certain statutory and regulatory requirements. The law stipulates that a child care institution shall not include detention facilities "or any other facility operated primarily for the detention of children who are determined to be delinquent". The definition of child care institution in Federal regulations at 45 CFR 1355.20 states that:

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

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

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

- **Source/Date:** 6/23/03
- **Legal and Related References:** Social Security Act - Section 472 (c)(2); 45 CFR 1355.20; Departmental Appeals Board California Department of Social Services Decision No. 960.

6. Question: Under section 471(a)(10)(B) of the Act, there must be at least one "onsite official...designated to be the caregiver who is authorized to apply the reasonable and prudent parent standard" as a condition of a contract the title IV-E agency enters into with a child care institution. May the onsite official(s) be someone affiliated with the child's case (such as the child care institution's case manager for the child)?

Answer: Yes. Officials of the child care institution affiliated with the child's case, such as the child care institution's case manager, may be a designated "onsite" official. The person must be trained in how to use and apply the reasonable and prudent parent standard in the same manner as prospective foster parents are trained.

- **Source/Date:** 8/26/15
- **Legal and Related References:** Social Security Act - Section 471(a)(10)(B)

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

Answer: The agency may claim title IV-E foster care maintenance payments on behalf of such a child for the first 14 days of the child's placement in a CCI that has not met QRTP requirements, or is not an allowable CCI placement specified in the Social Security Act (the Act). See §472(k)(1) and (k)(2) of the Act.

On the day that the CCI meets QRTP requirements, the agency must begin the statutory QRTP "clock," (the clock) to obtain the 30 day individualized assessment; the 60 day judicial review; and the agency head approval for placements in excess of six consecutive or non-

consecutive months (for a child under 13) or 12 consecutive/18 non-consecutive months for children 13 and over on the day of the month in which the CCI has met the QRTP requirements. See §472(k)(1); §475A(c) of the Act.

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

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

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

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

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

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

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

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

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

- **Source/Date:** 11/01/21
- **Legal and Related References:** See §472(k) of the Social Security Act.