

Child Welfare Policy Manual

Questions & Answers

8.3C TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements

1. Question: For what population of children must the section 422 protections be provided?

Answer: Section 422 of the Social Security Act requires that all of the protections set forth therein be provided to all children in foster care. "Foster care" is defined at 45 CFR 1355.20 as:

"24 hour substitute care for all children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes but is not limited to foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child-care institutions, and pre-adoptive homes regardless of whether the foster care facility is licensed and whether payments are made by the State or local agency for the care of the child or whether there is Federal matching of any payments that are made."

Situations exist in which a child who, while s/he may have been removed from her/his home and placed in 24 hour substitute care, is not considered to be in "foster care" because of the nature of the facility in which s/he is placed. In accordance with the statute, we have not considered detention facilities, forestry camps, training schools, facilities that are primarily for the detention of children who are adjudicated delinquent, and facilities like medical or psychiatric hospitals as foster care placements. Therefore, children placed in facilities of the type described here are not, by definition, in foster care and the State is not required to provide the protections to them while they are placed in such facilities.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 471 (22); 45 CFR 1355.20

2. Question: Please explain the requirements with respect to case plans and the case review system at section 475 of the Social Security Act (the Act) for a child and his/her minor parent in foster care.

Answer: The State is not required to satisfy the requirements of the case plan and case review system set forth at section 475 of the Act on behalf of a child of a minor parent because s/he has not been removed from her/his biological parent and; therefore, pursuant to Federal law and regulations, is not in foster care. However, good social work practice suggests that the minor parent's case plan include the needs of the child and that the child's needs and interests be addressed during the six-month periodic reviews and permanency hearings held on behalf of the minor parent.

In cases where the State has placement and care responsibility for both the minor parent and child, and has placed them in different foster homes, the child is considered to be in foster care and the requirements of the case plan and case review system at section 475 of the Act apply.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 475; 45 CFR 1355.20

3. Question: Section 471(a)(26) of the Social Security Act (the Act) requires the State to conduct and complete an interstate home study and return a report on the results of the study within 60 days (or 75 days under certain circumstances). Must the State include the results of the criminal background checks and child abuse registry checks on the prospective foster or adoptive family required by section 471(a)(20) of the Act in the 60-day report?

Answer: No. Section 471(a)(26) of the Act requires that if a State receives a request to conduct a "study of a home environment" to assess the safety and suitability of placing a child in the home, the State must within 60 days conduct, complete, and provide a report of the study to the requesting State. This requirement for an interstate "home study" does not encompass the Federal provisions for criminal background checks and child abuse registry checks in section 471(a)(20) of the Act. Rather, these checks are required before the State can license or approve a prospective foster or adoptive family. Ideally, however, the receiving State would include the results of the criminal background check and child abuse registry check in the report to the sending State so that the State could more readily determine the suitability of the home for the child.

- **Source/Date:** 01/29/07
- **Legal and Related References:** Social Security Act § sections 471(a)(26) and 471(a)(20)

4. Question: How will ACF determine compliance with the interstate home study requirements in section 471(a)(26) of the Social Security Act (the Act)?

Answer: Section 471(a)(26) of the Act is a title IV-E State plan requirement; therefore, ACF has the authority to apply the partial review process described in 45 CFR 1355.32(d), if warranted, to determine the State's compliance.

- **Source/Date:** 01/29/07
- **Legal and Related References:** Social Security Act § section 471(a)(26)

5. Question: Section 471(a)(26)(A)(i) of the Social Security Act (the Act) requires States to complete out-of-State home studies within 60 days, or 75 days in limited circumstances. Are the time limits of section 471(a)(26)(A)(i) of the Act based on business or calendar days?

Answer: The 60 and 75-day time limits that apply to the requirements of section 471(a)(26)(A)(i) of the Act are based on calendar days. Time limits referred to in the statute refer to calendar days unless otherwise specified.

- **Source/Date:** 04/24/07
- **Legal and Related References:** Social Security Act § section 471(a)(26)(A)

6. Question: Section 471(a)(26)(A)(i) of the Social Security Act (the Act) requires that States complete out-of-State home studies within 60 days, or 75 days in limited circumstances. At what point does the 60 or 75-day timeframe begin?

Answer: Section 471(a)(26)(A)(i) of the Act establishes that the 60 and 75-day period begins when the State that is to conduct the home study receives the home study request. It is up to each State to determine the entity in the State to receive these requests.

- **Source/Date:** 04/24/07
- **Legal and Related References:** Social Security Act § section 471(a)(26)(A)

7. Question: Section 471(a)(26)(A)(i) of the Social Security Act (the Act) requires that within 60 days of having received an interstate home study request from another State, the responding State conduct and complete the study and return a report to the requesting State. If the home study request is incomplete when it is received and additional information is required, when does the statutory 60-day timeframe begin?

Answer: A State may establish its own rules for what constitutes a completed out-of-State home study request pursuant to section 471(a)(26)(A)(i) of the Act. Therefore, the 60-day timeframe begins when a complete request, as defined by the State that is performing the home study, is received from the requesting State.

- **Source/Date:** 04/24/07
- **Legal and Related References:** Social Security Act § section 471(a)(26)(A)

8. Question: Under section 471(a)(26)(A) of the Social Security Act (the Act), the law requires a State receiving an out-of-State home study request to "directly or by contract" complete the home study. Does the statute permit either the responding or requesting State to contract with a private agency for an interstate home study?

Answer: Yes. When a State receives an out-of-State home study request, the State is required to conduct and complete the study "directly or by contract." However, the requesting State may choose to contract directly with a private agency to conduct an out-of-State home study, rather than requesting the State to complete the study.

- **Source/Date:** 04/24/07
- **Legal and Related References:** Social Security Act § section 471(a)(26)(A)

9. Question: Do Indian Tribes have to operate the title IV-B programs to operate a title IV-E program?

Answer: Yes, but only a title IV-B subpart 1 program. Section 471(a)(2) of the Social Security Act requires the same agency administering title IV-B, subpart 1 to operate the title IV-E program. To give this language effect, the title IV-E agency must operate a title IV-B, subpart 1 program. There is no similar requirement in title IV-E related to the title IV-B, subpart 2 program.

- **Source/Date:** 12/19/08
- **Legal and Related References:** Social Security Act § section 471(a)(2)

10. Question: Amendments to sections 475(1)(B) and (D), 475(5)(B-C))and section 475A of the Social Security Act (the Act) expand the case review and case plan requirements to prohibit a title IV-B/IV-E agency from providing a plan of another planned permanent living arrangement (APPLA) for youth under age 16 and also includes other changes to APPLA plans. When do these changes to the Act apply to children under age 16 already in the system as of the effective date of the provisions?

Answer: Once the state or tribe is required to meet the federal requirements,* the title IV-B/IV-E agency must apply the new APPLA requirements to any youth under age 16 as of the child's next permanency hearing. This also means that as of the state or tribal title IV-B/IV-E agency's effective date, the agency will be required to choose a permanency plan other than APPLA for youth under age 16 at the youth's next permanency hearing.

* Effective date for states: 9/29/15 unless a delayed effective date is approved. A limited period of delay is permitted when the Secretary of the U.S. Department of Health and Human Services determines that legislation (other than legislation appropriating funds) is required for a title IV-E agency to comply with the plan requirements under title IV-E of the Act imposed by the amendment. The "delayed effective date" is defined as the 1st day of the 1st calendar quarter after the 1st regular session of the state legislature or tribal governing body after enactment. Effective date for children under the placement and care of an Indian tribe, tribal organization or consortium: 9/29/17.

- **Source/Date:**

- **Legal and Related References:** Social Security Act – sections 475(1)(B) and (D), 475(5)(B-C) and 475A(a)

11. Question: What is the definition of “relative” for the title IV-E program?

Answer: Except where the title IV-E statute directly references the definition of relative under the former Aid to Families with Dependent Children (AFDC) program, title IV-E agencies have the discretion to define the term “relative” for the purposes of title IV-E.

Specifically, title IV-E agencies must use the definition of “specified relative” as described in section 406(a) of the Social Security Act (the Act) as in effect on July 16, 1996, and implemented in 45 CFR 233.90(c)(1)(v) for the following title IV-E foster care provision:

- Title IV-E foster care maintenance payment eligibility in part depends on whether a child would have received AFDC in the home of a “specified relative” from which the child was removed in or for the month of removal if the child has lived with the “specified relative” within 6 months of the child’s removal (see section 472(a)(3)(A) of the Act and Child Welfare Policy Manual 8.3A.11, Q/A #4).

Title IV-E agencies have the discretion to define “relative” when it is not otherwise defined by the statute, including under the following provisions:

- A title IV-E agency may define “relative” for purposes of claiming administrative costs for a limited period of time while the relative’s application for licensure or approval as a foster family home is pending, in accordance with 472(i)(1)(A) of the Act. (The child must have been removed from the home of a “specified relative” in order to be eligible for this administrative cost claiming.)
- A title IV-E agency may define “relative” for purposes of waiving non-safety licensing standards for relatives permitted under section 471(a)(10)(D) of the Act.
- A title IV-E agency has discretion to define the term “relative” for the purposes of the Title IV-E Kinship Guardianship Assistance Program. This means that the Children’s Bureau will accept a title IV-E plan or amendment that contains a reasonable interpretation of a relative, including a plan that limits the term to include biological and legal familial ties or a plan that more broadly includes Tribal kin, extended family and friends, or other “fictive kin” (see section 471(a)(28), section 473(d) and ACYF-CB-PI-10-11).
- Under the relative notification requirements of section 471(a)(29) of the Act, the title IV-E agency has discretion to determine the scope of the terminology “all other adult relatives.” However, to the extent that it is practical, the Children’s Bureau suggests that the agency use the same definition of “relative” for the relative notification provision and the title IV-E kinship guardianship assistance program option (if the agency elects the guardianship option) (see ACYF-CB-PI-10-11).

- A title IV-E agency that elects to develop different licensing or approval standards for relative or kinship foster family homes and non-relative/non-kinship foster family homes under 45 CFR 1355.20 may define “relative” and “kin” when determining to whom they will apply the relative licensing and approval standards. The Children’s Bureau encourages agencies to define relative and kin in a way that is inclusive of tribal custom and adopt a broad definition of relative and kin for purposes of licensing and approval standards.

- A title IV-E agency that elects to claim federal financial participation for allowable administrative costs of independent legal representation provided to the relative caregiver of a child who is eligible for title IV-E foster care under 45 CFR 1356.60(c)(4)(ii), has discretion to define the term “relative.” For example, a title IV-E agency may define relative to include kin and “fictive-kin.” In exercising this discretion, the Children’s Bureau encourages title IV-E agencies to implement a definition of “relative” that includes a wide range of kinship relationships to support early identification of relatives and kin and to help remove barriers to kinship placements.

- **Source/Date:** 8/8/2024

- **Legal and Related References:** Social Security Act sections 471(a)(10), (28) and (29), 472(a)(3)(A) and (i)(1)(A); 473(d); 45 CFR 233.90(c)(1)(v), 1355.20, and 1356.60(c)(4)(ii); Child Welfare Policy Manual 8.3A.11, Q/A #4 and 8.1B, Q/A #11; ACYF-CB-PI-10-11