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Child Welfare: State Plan Requirements under the Title IV-E Foster Care, Adoption Assistance, and Kinship Guardianship Assistance Program

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Summary

Under Title IV-E of the Social Security Act, states, territories, and tribes are entitled to claim partial federal reimbursement for the cost of providing foster care, adoption assistance, and kinship guardianship assistance to children who meet federal eligibility criteria. The Title IV-E program, as it is commonly called, provides support for monthly payments on behalf of eligible children, as well as funds for related case management activities, training, data collection, and other costs of program administration. For FY2013, states spent \$12.3 billion under the Title IV-E program (both federal and state dollars); at least 25% of this spending (some \$3.1 billion) was expended for the types of “administrative” program costs described in this report, including case planning and pre-placement activities related to children in or entering foster care, as well as licensing, recruitment, and background checks and other costs related to foster care providers.

As a condition of receiving this funding, states, territories, and tribes must have a Title IV-E plan that is approved by the U.S. Department of Health and Human Services (HHS), Administration for Children and Families. That plan must ensure direct financial assistance is made available to eligible children under the Title IV-E program. Further, it must ensure that the state, territory, or tribe will adhere to federal plan requirements primarily intended to ensure children’s safety, permanence, and well-being.

The focus of this report is Title IV-E plan requirements *other than* those related to provision of direct financial assistance to eligible children. Those requirements are intended to (1) enable children to be reunited with their families or prevent their entry to foster care; (2) promote children’s placement with relatives and maintain sibling connections; (3) ensure children’s living arrangements are safe and appropriate and permit “normalcy”; (4) provide for regular oversight and review of each child’s status in foster care and timely development and implementation of a permanency plan; (5) ensure timely efforts to find a permanent home for children or youth who cannot be reunited with their families; (6) ensure the health care and education needs of children in foster care are addressed; (7) help youth make a successful transition from foster care to adulthood; (8) identify, document, and determine services necessary for child welfare-involved children or youth who are victims (or at risk of) of sex trafficking and locate and respond to children or youth who run away or are missing from foster care; and (9) ensure program coordination and collaboration and meet certain administrative standards.

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Introduction

Under Title IV-E of the Social Security Act, states, territories, and tribes are entitled to claim partial federal reimbursement for the cost of providing foster care, adoption assistance, and kinship guardianship assistance to children who meet federal eligibility criteria. The Title IV-E program, as it is commonly called, provides support for monthly payments on behalf of eligible children, as well as funds for related case management activities, training, data collection, and other costs of program administration. For FY2013, states spent \$12.3 billion under the Title IV-E program and expected to receive federal reimbursement of \$6.7 billion, or 54% of that spending.

To be eligible to claim federal support under the Title IV-E program, a state, territory, or tribe must have a Title IV-E plan that is approved by the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF). The plan must provide that the state, tribal, or territorial agency that operates the Title IV-E program will adhere to all federal requirements related to providing direct financial assistance to all eligible children, including those related to ensuring the safety, permanence, and well-being of children receiving Title IV-E assistance. All 50 states, the District of Columbia, Puerto Rico, and 5 tribal entities have an approved Title IV-E plan.¹

This report focuses on the Title IV-E plan requirements that largely address the child welfare goals of safety, permanence, and well-being of children. Safety refers to ensuring that children served are protected from further abuse or neglect. Permanence refers to the goal of ensuring that children do not spend too many of their formative years in foster care. Accordingly, if a child enters foster care the state must work to quickly and safely reunite a child with his or her parents, or, if that is not possible or appropriate, to quickly find another safe and permanent home for the child. Well-being is inextricably linked to children's safety and permanency. The term generally refers to efforts by the child welfare agency to promote positive developmental outcomes for the children they serve—including education and physical and mental health outcomes—as well as to enhance the capacity of children's families to help drive those positive outcomes.

Title IV-E Plan Scope and Submission Requirements

The Title IV-E plan is a single document that applies to all three Title IV-E program components (foster care, adoption, and kinship guardianship). No state may receive funding under any one of the Title IV-E components without meeting each of the plan requirements (whether that requirement is directed toward children in foster care, or those receiving adoption assistance, or kinship guardianship assistance).² Although Title IV-E plan requirements primarily address meeting the needs of children while they are in foster care, those requirements are meaningful to other children receiving assistance under Title IV-E because nearly all children who receive Title IV-E adoption assistance, and all of those who receive Title IV-E kinship guardianship assistance, were previously in foster care. Additionally, the Preventing Sex Trafficking and Strengthening

¹ Tribes were first authorized to receive direct federal funding under the Title IV-E program as of FY2010. Tribes with an approved plan, as of early fall 2014 are Port Gamble S'Klallam of Kingston Washington; Confederated Salish and Kootenai Tribes of Pablo, Montana; South Puget Intertribal Planning Agency of Shelton Washington; Keweenaw Bay Indian Community Baraga, Michigan; and Navajo Nation, Window Rock, Arizona.

² Section 471(a) of the Social Security Act (SSA) and 45 C.F.R. 1356.20(a) and 1356.21(a).

Families Act (P.L. 113-183) mandates that states, under the Title IV-E plan, develop and implement protocols to identify, document, and determine necessary services for certain child welfare-involved children and youth who are victims of sex trafficking or at risk of being such victims. These protocols are to apply to children for whom the child welfare agency has an open case file (whether or not the child is, or was previously, in foster care), as well as to children who are in foster care, including those who have run away from their foster care placement, and youth formerly in foster care who are receiving services under the Title IV-E Chafee Foster Care Independence (CFCIP) program. P.L. 113-183 requires states to implement these protocols no later than September 29, 2016.

A Title IV-E plan must be submitted to HHS, ACF using a “pre-print” (rather than as a narrative description). The “pre-print” is a form that lists each requirement of the plan and provides a space for the Title IV-E agency to fill in the relevant law, regulation, or policy indicating that it is in compliance with the given requirement. A state’s Title IV-E plan must be amended and/or updated as necessary to reflect policy compliance with any new requirements included in the law.³

Significance of Title IV-E Plan Requirements to Federal Title IV-E Funding

Funding spent under the Title IV-E program—both federal and state dollars—must be spent on “eligible activities” and on behalf of “eligible children.” Eligible activities are, for the most part, described in the Title IV-E plan. In FY2013, state child welfare agencies spent \$12.3 billion in federal and state Title IV-E dollars with the *second*-largest category of Title IV-E spending (25%, \$3.1 billion) used to support the kind of Title IV-E “administrative” activities that are the primary focus of the plan requirements described in this report. These include requirements related to case planning and management for eligible children in foster care, pre-placement activities for eligible children at imminent risk of entering foster care; and licensing, recruitment, or background checks for foster care providers of eligible children. The single largest amount of FY2013 Title IV-E spending (28%, \$3.5 billion) provided payments to support eligible children in new permanent families (including for adoption assistance and kinship guardianship assistance). Spending for foster care maintenance payments on behalf of eligible children in foster care (20%, \$2.5 billion) represented the third-largest Title IV-E program spending category. (See **Figure 1** for all Title IV-E spending.)⁴

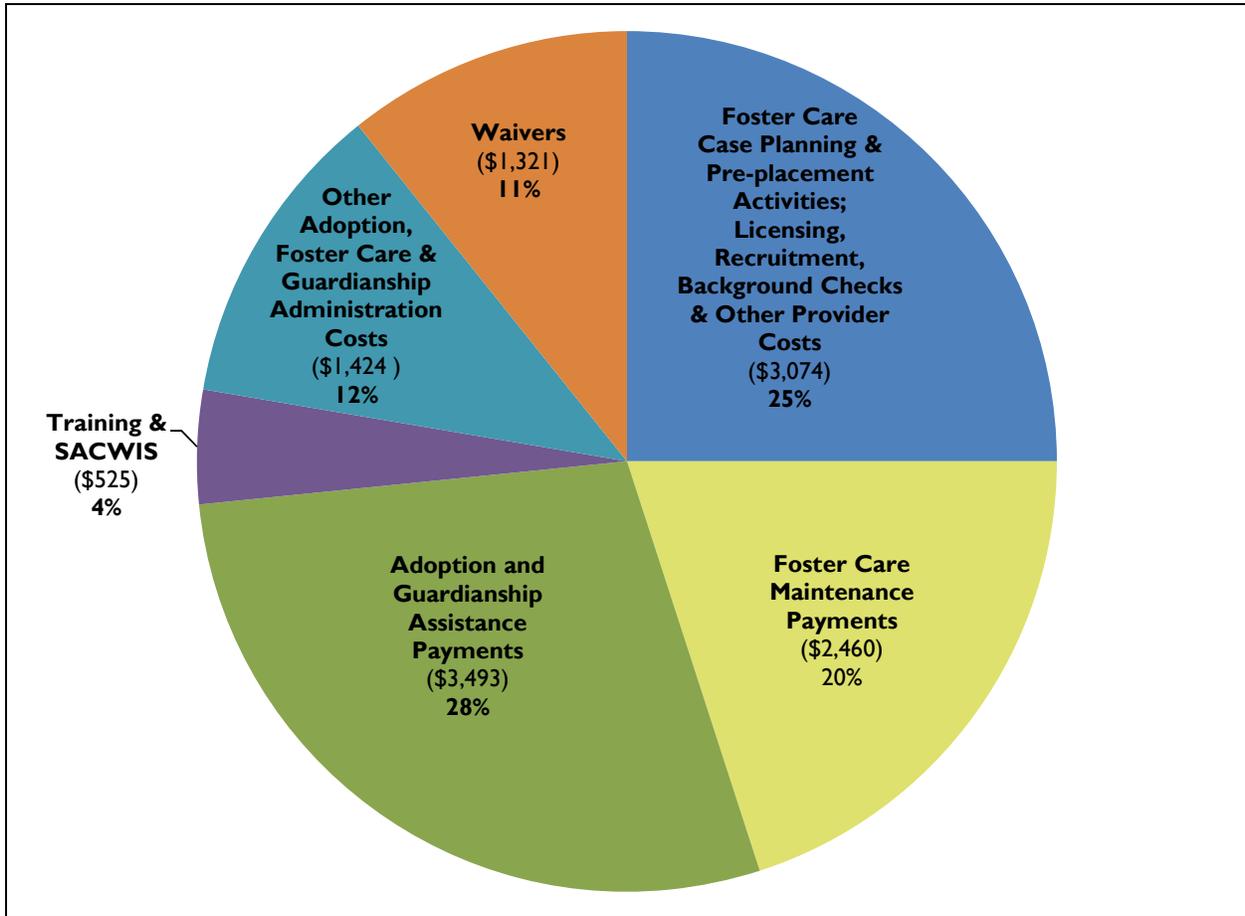
³ See “Title IV-E pre-print” issued by HHS, ACF, Administration on Children, Youth and Families (ACYF), Children’s Bureau on April 17, 2013, which provides a complete revision and update of Title IV-E plan requirements as of that date (<http://www.acf.hhs.gov/programs/cb/resource/pi1305>). The subsequent changes made to the Title IV-E plan by P.L. 113-183 (enacted September 29, 2014) will require new updates to the Title IV-E pre-print.

⁴ Information about Title IV-E eligibility and funding for other Title IV-E purposes, including assistance payments, training, data collection, eligibility determination and other costs, is outside the scope of this report. For more information, readers may consult CRS Report R42792, *Child Welfare: A Detailed Overview of Program Eligibility and Funding for Foster Care, Adoption Assistance and Kinship Guardianship Assistance under Title IV-E of the Social Security Act*, by (name redacted).

Figure I. Total Federal and State Title IV-E Spending, FY2013

States claimed total FY2013 spending of \$12.3 billion, of which the federal share was \$6.7 billion (54%).

Dollars are shown in millions



Source: Figure prepared by the Congressional Research Service (CRS) based on FY2013 Title IV-E Expenditure claims data compiled by HHS, ACF, Office of Legislative Affairs and Budget. Data are as claimed by states and do not reflect any disallowances or deferrals that may subsequently be taken.

Notes: SACWIS is the acronym for Statewide Automated Child Welfare Information System (SACWIS). For the purposes of this figure, CRS grouped expenditures reported by states (via form CB-496) as follows: the category “Adoption or Guardianship Assistance Payments” includes claims for ongoing and non-recurring assistance payments, as well as guardianship assistance provided to some children who previously received this assistance under a Title IV-E subsidized guardianship waiver. The “Foster Care Case Planning & Pre-placement Activities; Licensing, Recruitment, Background Checks & Other Provider Costs” includes costs claimed in three foster care administrative categories (one for pre-placement activities and two in-placement). The “Training & SACWIS” category includes all claims made for training costs, whether related to foster care, adoption, or guardianship, as well as any claims made for SACWIS operation and development. Claims for adoption and guardianship administrative costs (other than training) are shown in the “Other Adoption, Foster Care & Guardianship Administration Costs” category. That category also includes foster care administrative claims for non-SACWIS related data collection and reporting, eligibility determinations, and agency administration. The “Waivers” category includes all spending claimed under a Title IV-E waiver. This spending may represent costs for any of the purposes shown in this figure as well as other child welfare purposes as included in a given state’s waiver authority.

Waivers

As of October 2014, 29 states, the District of Columbia, and 1 tribe had approval for, or were already implementing, a Title IV-E waiver project.⁵ (Authority for HHS to issue these waivers expired on September 30, 2014.)⁶ Under a waiver, formally called a “child welfare demonstration project,” states may be permitted to spend Title IV-E funds for activities other than those described in the Title IV-E plan—and for a broader set of individuals—so long as the project meets the overall child welfare goals of Title IV-E and is cost neutral to the federal government.⁷ At the same time, the statute prohibits HHS from waiving any requirement that would “impair the entitlement” of any child or family to benefits or services under Title IV-E. Additionally, it prohibits HHS from waiving any of the child protections included in the case planning and case review system.⁸ These case planning and review requirements are numerous. They are discussed throughout the report and are shown together in **Figure 2**, at the end of the report. Spending related to meeting these requirements is included as part of the foster care case planning and pre-placement activities; licensing, recruitment, and background check category shown in **Figure 1**.

Federal Oversight of Title IV-E Plan Compliance

Compliance with specific Title IV-E plan requirements is subject to periodic federal conformity reviews, the largest of which is the Child and Family Services Review (CFSR).⁹ That review assesses outcomes achieved by the state for the children it serves through detailed onsite review of a specified number of case records in a given state and by measuring statewide performance against certain national data indicators. Additionally, stakeholders are interviewed as a part of assessing whether the state has specific “systems” in place that are required by the federal child welfare law and are intended to facilitate the achievement of safety, permanency and well-being for children. States that are found to be out of “substantial conformity” with federal policy must develop and successfully implement a Program Improvement Plan (PIP) to avoid fiscal penalties.

The reviews are conducted in each of the 50 states, the District of Columbia and Puerto Rico. A third round of the CFSR is scheduled to begin in FY2015 and will continue through FY2018.¹⁰ In the first two rounds of the CFSR (conducted in 2001-2004 and 2007-2010) no jurisdiction was found in full compliance with federal child welfare policies.¹¹

⁵ HHS, ACF, ACYF, Children’s Bureau, “Summary of Child Welfare Waiver Demonstrations,” October 2014.

⁶ Section 1130(a)(2) of the SSA. Additionally, the law prohibits any state from operating a waiver after September 30, 2019 (Section 1130(d)).

⁷ For more information about child welfare waivers see information at this HHS, ACF, ACYF, Children’s Bureau website <http://www.acf.hhs.gov/programs/cb/programs/child-welfare-waivers>.

⁸ Section 1130(b) of the SSA. The law prohibits HHS from waiving the Title IV-B child protection requirement (Section 422(b)(8), which among other things, includes all case system review procedures shown in **Figure 2**. States are separately required under the Title IV-E plan (with regard to Title IV-E eligible children) to meet these requirements. Further, due to the inter-related nature of Title IV-B and Title IV-E (discussed in final section of this report) states are effectively required to provide these child protections (with or without Title IV-E dollars). The law also prohibits HHS from waiving the Title IV-E data collection and reporting requirements (implemented as AFCARS).

⁹ Section 1123A of the SSA; 45 C.F.R. 1355.31 et seq.

¹⁰ For information specific to third round of the CFSR see <http://www.acf.hhs.gov/programs/cb/monitoring/child-family-services-reviews/round3>. Additionally, the statewide data indicators that will be used in this review are included in a final rule published in the October 16, 2014 *Federal Register* (v. 79, no. 107), pp. 61241-61261.

¹¹ For information on the specific findings from the most recent set of reviews (conducted from 2007-2010) see the (continued...)

Overview of Requirements Related to Children's Safety, Permanence, and Well-Being

Apart from providing assistance to eligible children, the state, territorial, or tribal agency operating a Title IV-E program must have an approved Title IV-E plan that provides for policies and procedures to accomplish the following nine purposes:

- **Enable children to be reunited with their families or prevent their entry to foster care** (e.g., by making “reasonable efforts”—in nearly all cases—to prevent children’s entry into foster care or to reunite children with their families, including by developing a plan for each child that describes services and activities necessary to permit reunification).
- **Promote children’s placement with relatives and maintain sibling connections** (e.g., by considering placement of a child with a relative rather than a non-relative foster caregiver, making diligent efforts to identify adult relatives of children who enter care and notifying those relatives of their options to be involved in the child’s care and placement; and by always placing sibling groups in the same foster, adoptive or kinship home, unless this is contrary to the welfare of one of those siblings).
- **Ensure children’s living arrangements are safe and appropriate and permit “normalcy”** (e.g., by establishing licensing standards for foster family homes and other group or residential settings where foster children live and requiring them [effective September 29, 2015] to ensure foster caregivers may apply a “reasonable and prudent parenting standard” when determining age and developmentally appropriate activities in which foster children may participate; and by conducting background checks of prospective foster and adoptive parents, and of prospective relative guardians).
- **Provide for regular oversight and review of each child’s status in foster care and timely development and implementation of a permanency plan** (e.g., by conducting a periodic review of a child’s status in care no less often than once every 6 months and by ensuring that a court establishes a permanency goal for a child no later than 12 months from the date a child enters foster care, and every 12 months thereafter while the child remains in care).
- **Ensure timely efforts to find a permanent home for children or youth who cannot be reunited with their families** (e.g., by making concurrent efforts to reunite a child and to find him or her a new adoptive home; and, unless certain exceptions exist, by petitioning the court to terminate the parental rights of any child who has been in care for 15 of the last 22 months, is an abandoned infant, or whose parent has committed certain crimes against the child or his siblings).
- **Ensure the health care and education needs of children are addressed** (e.g., by requiring states to establish and update a health and education record for child

(...continued)

HHS report, *Federal Child and Families Services Review, Aggregate Report, Round Two, Fiscal Years 2007-2010 (December 2011)* available at http://www.acf.hhs.gov/sites/default/files/cb/fcfsr_report.pdf.

- in foster care; and ensuring an education stability plan for each child in foster care).
- **Help youth make a successful transition from foster care to adulthood** (e.g., by engaging older children in care in their own case planning [effective September 29, 2015] and including in the case plan a written description of programs and services necessary to help them transition to successful adulthood; by requiring that within the 90-day period before a youth will leave foster care due to age [rather than placement in a permanent family] that a caseworker help the youth develop a transition plan with specific options related to housing, health insurance coverage, education, employment, mentoring, and other support services; and [effective September 29, 2015], by providing certain critical documents, such as a driver’s license to youth aging out of foster care).
 - **Respond to certain child and youth victims of sex trafficking, those who may be at risk of sex trafficking, and those who run away from foster care** (e.g., by developing and, as of September 29, 2016, implementing protocols to identify, document, and determine services necessary for these victims or those at risk of being victims; and by establishing protocols to locate and provide appropriate responses for children who run away from their foster family home or group care placement).
 - **Ensure program coordination and collaboration and meet certain administrative standards** (e.g., by requiring operation of a program under Title IV-B, Subpart 1 of the Social Security Act—known as the Stephanie Tubbs Jones Child Welfare Services Program).

Critical to meeting many, but not all, of these Title IV-E plan requirements is the establishment of a case review system that, among other things, includes a set of specific procedures related to case planning and regular review of the child’s status and permanency goal while in care. For an overview of case review components, including case planning and permanency planning requirements, see **Figure 2** at the end of this report.

Title IV-E plan requirements in each of the areas outlined above are discussed in greater detail in the remainder of this report. With limited exceptions, plan requirements are the same whether they are to be carried out by a state, territory,¹² or tribe.¹³ In the remainder of this report they are described as applying to the “states,” the “state child welfare agency,” or the “Title IV-E agency.” Those terms are generally used interchangeably here and refer to all 50 states, the District of Columbia, and Puerto Rico (each of which has an approved Title IV-E plan), or the “state” child welfare agency in the jurisdiction that administers the Title IV-E plan.

¹² The territories of Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa are authorized to participate in Title IV-E, generally, on the same basis as any of the 50 states. (The Northern Mariana Islands is not expressly authorized by law to operate a Title IV-E program.) To participate in the program, territories must meet all of the same program requirements provided for the 50 states. However, certain provisions related to funding under the Title IV-E program vary from those applicable to states. Through FY2014, Puerto Rico is the only territory that has an approved Title IV-E plan and that plan has been in place since FY1998. However, due to problems related to identifying eligible Title IV-E costs, Puerto Rico has made very limited Title IV-E claims since FY2003.

¹³ In general a tribe, tribal organization, or tribal consortia seeking to operate a Title IV-E program must meet all of the requirements provided for states. Limited exceptions and special rules applicable to tribal entities are spelled out in Section 479B of the Social Security Act.

Prevent Entry into Care or Reunite Children with Their Parents

Under the legal doctrine of *parens patriae*, government may intervene to remove children from their homes when a child’s safety is compromised. At the same time, the U.S. Constitution has long been understood to grant parents a fundamental liberty interest in raising their children as they choose, and a central philosophy of child welfare practice remains that children are best served when they can live safely with their parents.¹⁴ The state child welfare agency is required to make a child’s safety and health the paramount concern in all decisions related to preserving or reuniting a family.

With limited exceptions (see text box), the Title IV-E program requires states to make “reasonable efforts” to prevent the need for a child’s removal from his or her home and, if a child does enter care, to make it possible for him or her to safely return home.¹⁵ Toward this end, children entering or in foster care are to be placed in foster family homes or other living arrangements that are “in close proximity” to the home of their parents, consistent with the best interests and any special needs of the child.

Further, for each child in care, the Title IV-E agency must develop a written case plan that addresses services to be provided to the parents, child, and foster parents that will improve conditions in the parents’ home, facilitate the return of the child to his or her own safe home (or other permanent placement of the child), and address the needs of the child while in foster care.¹⁶ This case plan must be developed jointly by the Title IV-E agency and the child’s parents.¹⁷ As of September 29, 2015, any youth in care at age 14 must also be involved in development of the case plan.¹⁸ (For more about this requirement, see “Help Youth Transition Successfully From Foster Care to Adulthood.”) Finally, the Title IV-E

When Are “Reasonable Efforts” Not Required?

Federal law lists certain circumstances when reasonable efforts to preserve or reunite a family *are not* required under the Title IV-E program. Specifically, they are not required if a court of competent jurisdiction has determined any of the following:

- The child’s parent has subjected the child to aggravated circumstances (as defined in state law), which may include abandonment, torture, chronic abuse, sexual abuse, or other circumstances as defined by the state.
- The child’s parent has been convicted of the murder or voluntary manslaughter of another child of the parent; aiding, abetting, attempting, or conspiring to commit such a murder or voluntary manslaughter; or felony assault that results in serious bodily injury to the child or a sibling of the child.
- The parental rights of the parent with respect to a sibling of the child have been involuntarily terminated.

Although Title IV-E does not require a state child welfare agency to make reasonable efforts in these listed circumstances, it also does not prohibit that agency from making those efforts.

Source: Section 471(a)15 of the Social Security Act.

¹⁴ Jill Goldman, et al., *A Coordinated Response to Child Abuse and Neglect: The Foundation for Practice*, Washington, DC: HHS, ACF, ACYF, Children’s Bureau (2003), pp. 10-11, 51-52.

¹⁵ Section 471(a)(15)(A) and (B) of the SSA. This requirement is applicable to the Title IV-E program. Separately, under the Indian Child Welfare Act (ICWA), any agency that brings a petition for removal of an Indian child before a *state* court must satisfy that court that “active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.” ICWA does not provide exceptions to the active efforts requirement. (See 25 U.S.C. 1912(d).)

¹⁶ Section 471(a)(16) and Section 475(1)(A) and (B) of the SSA.

¹⁷ 45 C.F.R. 1356.21(g). See also *Child Welfare Policy Manual*, Section 8.3C.1, Q&A 1—Title IV-E agency should document in the case plan if it is unable to locate a parent(s) or the parent is unwilling to participate in the case plan.

¹⁸ Section 113 of P.L. 113-183. A state may have limited additional time to comply if HHS determines doing this will require it to enact new legislation (other than appropriations).

agency must have procedures in place to safeguard parental rights pertaining to the child’s removal from the home of his/her parent, any change in the child’s placement while in foster care, and any determination affecting parents’ visiting privileges.¹⁹ (For further information about the contents of the case plan, see **Figure 2** at the end of this report.)

Planning for and Ensuring Safe, Appropriate Placements and Permitting Normalcy

Ensuring a child’s safety and well-being during his/her temporary stay in foster care is a critical responsibility of the child welfare agency. Toward this end, the state child welfare agency must include in the written case plan—required for each child in foster care—a description of the home or other setting where the child is placed, and a discussion of its safety and appropriateness for the child. The foster care placement must be the least restrictive (most family-like) and most appropriate setting available and in close proximity to the parents’ home, consistent with the best interest and special needs of the child.²⁰ Changes enacted to the foster home licensing requirements in 2014 (generally effective September 29, 2015) require states to make additional efforts to balance safety considerations with a child’s access to, and participation in, age and developmentally appropriate activities.

As part of their Title IV-E plan, state agencies must develop and implement standards to ensure that children in foster care placements, whether with public or private agencies, receive quality services that protect their health and safety.²¹ Additionally, to ensure safe, quality, and appropriate placements, states must establish

licensing requirements for foster family homes and facilities and conduct background checks of prospective foster and adoptive parents and prospective relative guardians. Further, states are required to certify that they will adequately prepare prospective foster parents with knowledge and skills appropriate to meet a child’s needs before that child is placed with those foster parents and that this preparation will be continued, as necessary, after the child’s placement. Effective September 29, 2015, this preparation must include training related to understanding children’s

Definitions Related to Supporting “Normalcy” for Children in Foster Care

“The term **‘reasonable and prudent parent standard’** means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver [including a foster family home parent or designated caregiver in a foster care institution or group setting] shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities.”

“The term **‘age or developmentally-appropriate’** means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age group; and, in the case of a specific child, activities or items that are suitable for a child with respect to the cognitive, emotional, physical and behavioral capacities of the child.”

Source: Section 111 of P.L. 113-183. Effective September 29, 2015, these definitions are included in Section 475(10) and (11) of the Social Security Act.

¹⁹ Section 471(a)(16) of the SSA; 45 C.F.R. 1356.21(f); Section 475(5)(C)(ii) of the SSA.

²⁰ Section 471(a)(16) of the SSA; 45 C.F.R. 1356.21(f); Sections 475(1)(A) and 475(5)(A) of the SSA.

²¹ Section 471(a)(22) of the SSA.

developmental stages and on using a “reasonable and prudent parent standard” to allow children to participate in age or developmentally appropriate activities.²²

Licensing Standards

States may determine the particular licensing standards that apply to foster family homes and other settings where children who are placed in foster care live (e.g., group homes, residential institutions). However, those standards must be reasonably in accord with recommendations of national organizations concerned with this kind of licensing, and they must set policies related to safety, sanitation, admissions, and protection of civil rights. Additionally, as of September 29, 2015, they must permit the use of the reasonable and prudent parent standard and include policies related to liability of foster caregivers in applying that standard. Further, as of that same date, the state’s foster care licensing standards must ensure that every group facility under contract with the state to provide foster care is required, under that contract, to have, onsite, at least one caregiver who is authorized to apply the reasonable and prudent parent standard. The contract must further provide that the designated caregiver is to use this standard to make decisions about a foster child’s participation in age and developmentally appropriate activities and must receive training on use of the standard (in the same manner as training is provided for foster parents).²³

Waiving Non-Safety-Related Standards in Relative Homes

Foster care licensing standards must be periodically reviewed to ensure their “continued appropriateness,”²⁴ and, since 2000, they must apply to any foster family home setting (relative or non-relative). However, on a case-by-case basis, a Title IV-E agency may grant waivers of non-safety-related licensing standards to permit placement of children with relatives. A study of state practice regarding licensing relative foster family homes, and the use of waivers in issuing such licenses, found that 15 states did not permit use of licensing waivers to enable relatives to become licensed foster parents in any case.^{25, 26} Among the 37 states that permitted licensing waivers, 26 were able to report on the frequency with which such waivers were issued in FY2009. That frequency varied considerably from 0 (in two states) to 274 (in one state); most of the states reporting on this question issued fewer than 30 relative licensing waivers in FY2009.²⁷

The most commonly waived non-safety licensing standards for relative homes pertained to a child’s sleeping arrangements or the required space in the home (e.g., size of bedroom). Other waivers permitted more children in the home, or children of different ages than would normally be allowed. Relatives also received exemptions from pre-license and ongoing foster parent

²² Section 471(a)(24) of the SSA as amended by Section 111 of P.L. 113-183. A state may have limited additional time to comply if HHS determines doing this will require it to enact new legislation (other than appropriations).

²³ Section 471(a)(10) of the SSA as amended by Section 111(b) of P.L. 113-183. A state may have limited additional time to comply if HHS determines doing this will require it to enact new legislation (other than appropriations).

²⁴ Section 471(a)(11) of the SSA.

²⁵ HHS, ACF,ACYF, Children’s Bureau, *Report to Congress on States’ Use of Waivers of Non-Safety Licensing Standards for Relative Foster Family Homes* (2011). The study included responses from 52 jurisdictions—50 states, the District of Columbia, and Puerto Rico—which are collectively referred to as “states.”

²⁶ *Ibid.* The 15 states were Alabama, Alaska, Delaware, Florida, Georgia, Kentucky, Minnesota, Mississippi, New Mexico, Oklahoma, Puerto Rico, Texas, West Virginia, Wisconsin, and Wyoming.

²⁷ *Ibid.* Eleven states that permitted waivers were not able to report on the frequency with which the waivers were granted.

training requirements, or extensions to complete foster parent training, health evaluations, or First Aid and CPR training. States also reported granting waivers (albeit less frequently) for requirements related to a caregiver having adequate income, the age of the caregiver, testing of well water (if relatives agreed to use bottled water for drinking and cooking), possession of renter's insurance, and home telephone service, among other items.²⁸

Background Checks

Although states may consider background checks as part of their licensing process, the Title IV-E requirement for background checks of prospective foster or adoptive parents and prospective relative guardians is separately established in the law. It may not be waived under the licensing provisions discussed previously.²⁹

Under current law, Title IV-E agencies must conduct a fingerprint-based check of national crime databases (i.e., a Federal Bureau of Investigation [FBI] check) of a prospective foster or adoptive parent, or a prospective relative guardian before approving the placement of a child with that prospective foster or adoptive parent or guardian.

This requirement applies for any state child welfare agency placement of a child in foster care, with an adoptive family or with a relative guardian—without regard to whether the child will be receiving Title IV-E assistance. In addition, if the state agency intends to claim federal support under Title IV-E for direct financial assistance provided to this child, it may not approve the placement of the child in a home where the criminal background check reveals that the prospective foster or adoptive parent committed certain crimes.³⁰

Title IV-E Support Not Available When Records Check Reveals Certain Criminal History

A state child welfare agency may not seek Title IV-E support for assistance provided to a child placed with a prospective foster or adoptive parent, if a records check of that adult reveals a felony conviction (at any time) for child abuse or neglect; for abuse of a spouse; for a crime involving children (including child pornography), or for a crime involving violence (including rape, sexual assault or homicide, but not including other physical assault or battery); OR if the record check shows a felony conviction for physical assault, battery, or a drug-related offense that was committed in the last five years.

Source: Section 471(a)(20)(B) of the Social Security Act.

Many child abuse and/or neglect cases are not the subject of criminal court proceedings. Thus information on the perpetrators in such cases would not appear in a criminal records check but might be included in a state child abuse and neglect registry. Accordingly, Title IV-E agencies are required to check any child abuse and neglect registry that is maintained by the state for information about a prospective foster or adoptive parent, or prospective relative guardian (and any other adult living in the household of a prospective parent or guardian). The check must be made before approving placement of a foster child in the home whether the child is Title IV-E eligible or not. Title IV-E agencies must also request (and all states must comply with such

²⁸ Ibid, p. 8.

²⁹ HHS, ACF, ACYF, Children's Bureau, PI-10-11, "Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008," July 9, 2010, p. 24.

³⁰ Section 471(a)(20)(A) and (C) of the SSA. The prohibition on placement in a home where the background check reveals a certain criminal history is not explicitly extended to prospective relative guardians in this section of the law. However, it is effectively applied to them through the Title IV-E eligibility requirements for kinship guardianship assistance. Specifically, to be eligible for Title IV-E kinship guardianship assistance, a child must have been eligible to receive Title IV-E foster care maintenance payments while living with his/her prospective relative guardian for at least six months. See Section 473(d) of the SSA.

requests) information from the child abuse and neglect registry of any other state where the prospective foster or adoptive parent (or other adult) lived in the previous five years.³¹ The law does not stipulate how any information obtained from a registry check must be used by the child welfare agency.

Enable Placement with Relatives and Maintain Sibling Connections

Placing children with kin—often grandparents, aunts, or uncles—has deep cultural roots and is understood in child welfare practice as a way to preserve important connections for children via extended family.³² Ensuring that siblings remain together may also be considered a form of preserving family connections. Title IV-E agencies are required to take certain steps to identify relatives with whom a child in foster care may be safely placed, and they must work to maintain sibling relationships for children. Title IV-E agencies are required to “consider giving preference” to an adult relative over a non-related caregiver when determining where a child in foster care should live, provided the adult relative meets all the state’s relevant child protection standards.³³ Further, within 30 days after a child’s removal from the custody of his or her parent, the state must “exercise due diligence” to identify all adult relatives of the child, notify them that the child has been or is being removed from the custody of the parents(s), and inform them of their options to participate in the child’s care and placement.³⁴ The law does not require a particular method for states to give this notice. HHS encourages states to use more than one method (e.g., in writing and orally).³⁵

As part of this notice to adult relatives, the Title IV-E agency must describe the state licensing requirements for a foster family home and any additional services and supports that may be available to children in a *licensed* foster family setting. Although the federal policy requiring the same licensing standards for relatives and non-relatives has been in place since 2000, some states continue to report “differences in practice and philosophy as to whether or not relatives should be licensed.” Further, states have also long asserted that some relative foster parents prefer not to have their homes licensed for a variety of reasons, including that the process is too time-consuming and paperwork too overwhelming; relatives wish to entirely avoid the child welfare system; relatives do not want to provide autobiographical information, including family’s medical history; relatives already receive financial support from parents or via disability payments from Social Security made on the child’s behalf; relatives elect to receive a Temporary Assistance for Needy Families (TANF) child-only payment instead of becoming licensed foster parents; relatives

³¹ Section 471(a)(20)(B) of the SSA.

³² Rebecca L. Hegar and Maria Scannapieco, “Kinship Care: Preservation of the Extended Family,” pp. 518-535 in Gerald P. Mallon and Peg McCartt Hess, editors, *Child Welfare for the 21st Century*, New York: Columbia University Press, (2005).

³³ Section 471(a)(19) of SSA.

³⁴ Section 471(a)(29) of the SSA. This requirement is subject to exceptions due to family or domestic violence.

³⁵ HHS, ACF, ACYF, Children’s Bureau, PI-10-11, “Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008,” July 9, 2010, p. 23. HHS also notes in this guidance that this requirement “does not alter or supersede in any way” the notice provisions of the Indian Child Welfare Act. Under ICWA, any party that is seeking *in a state court* to involuntarily remove an Indian child from his or her home (for placement in foster care) or to terminate the parental rights to an Indian child, must notify the child’s tribe and the parent or Indian custodian of the child of the pending court proceeding. The notice must be provided in writing, following specific statutory rules and time frames. See 25 U.S.C. 1912(a).

are able to provide financially without a foster care payment; or relatives believe children's status will soon change (e.g., be reunited with their parents or turn 18 years of age).³⁶

In addition to highlighting placement with adult relatives, federal law requires states to help children maintain connections with their siblings. In September 2014 (and effective immediately), Congress amended Title IV-E plan requirements to stipulate that adult relatives to whom notice of

a child's removal from the home must be provided include "all parents of a sibling of the child, where such parent has legal custody of such sibling."³⁷ And since October 2009, states have been required to place siblings who are removed from their home in the same foster care, adoption, or guardianship living arrangement, or, when this is not possible, to facilitate frequent visitation

or permit other ongoing interactions between the siblings. The law provides an exception to this requirement if the state documents that doing so would be contrary to the safety or well-being of any of the siblings.³⁸ According to HHS, while decisions on the frequency of sibling visitation and contact are expected to occur on a case-by-case basis, this contact must be no less often than once a month.³⁹ Under the Title IV-E program, states may seek federal reimbursement for a part of the cost of providing transportation necessary to allow siblings to maintain contact. The claim may be made as a Title IV-E program administrative cost or as part of the child's Title IV-E foster care maintenance payment.⁴⁰

Definition of Sibling

The term **sibling** is defined to mean an individual who is considered under state law to be a sibling of the child or an individual who would be considered a sibling of the child under state law but for a termination or other disruption of parental rights.

Source: Section 475(12) of the Social Security Act, as added by Section 209 of P.L. 113-183, effective September 29, 2014.

Provide Regular Oversight of a Child's Status in Foster Care and Timely Development and Implementation of a Permanency Plan

A written case plan for a child in foster care must be developed within a "reasonable" time period after a child's removal from his/her home, but not later than 60 days after that removal.⁴¹ The plan must address the safety and appropriateness of the child's placement setting, describe the services to be provided to the child and his/her family to enable a child to return home or to another permanent setting, and, for children who are not returning home, document the steps the Title IV-E agency is taking to find and finalize another permanent home. Additionally, the case plan must include the child's health and education records, and ensure the educational stability of the child entering or in foster care.⁴² An administrative or court review of the case plan must occur no less

³⁶ HHS, ACF, ACYF, Children's Bureau, *Report to Congress on States' Use of Waivers of Non-Safety Licensing Standards for Relative Foster Family Homes* (2011), p. 9.

³⁷ Section 209 of P.L. 113-183. Section 210 of that law makes the Section 209 amendment effective as of date of its enactment (September 29, 2015), with limited time exceptions permitted for a state if HHS determines the state needs to enact legislation (other than appropriations) to meet the new requirement.

³⁸ Section 471(a)(31) of the SSA.

³⁹ HHS, ACF, ACYF, Children's Bureau, PI-10-11, "Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008," July 9, 2010, Sections G.

⁴⁰ *Ibid*, Section M (regarding administrative claims for sibling visit; HHS, ACF, ACYF, Children's Bureau *Child Welfare Policy Manual*, Section 8.3B.1 Q&A4(h) regarding claiming as part of foster care maintenance payment).

⁴¹ 45 C.F.R. 1321(g).

⁴² Section 471(a)(16) and Section 475(1) of the SSA.

often than once every six months. This review must determine the safety of the child; the continued need or appropriateness of the foster care placement; the extent of compliance with the case plan (e.g., have promised services been provided?); and the extent of progress toward alleviating or improving the circumstances that made placement in foster care necessary. Finally, it must include a projection of the likely date by which the child will be safely returned home or placed for adoption or legal guardianship.⁴³ A child's case plan should be updated as necessary following each six-month review.⁴⁴ As of September 29, 2015, this review may include additional checks specific to any child who has been given a permanency plan of Another Planned Permanent Living Arrangement, or APPLA. (For further description of APPLA and these requirements see "Requirements for Youth in Care with the Permanency Plan "APPLA.")

There is no requirement that a court review or approve a child's overall case plan.⁴⁵ However, a court must determine and regularly review the *permanency plan* for each child in foster care. Specifically, an initial permanency hearing must occur within 12 months of a child's entry to foster care or within 30 days of judicial determinations that reasonable efforts to preserve or reunite the family are not necessary (whichever date comes first). Subsequent permanency hearings must occur every 12 months for as long as the child remains in foster care. This hearing must determine the child's permanency plan, addressing whether—and, as applicable, when—a child will be returned to his or her parents; placed for adoption (and a petition for termination of parental rights will be filed by the Title IV-E agency); referred for legal guardianship; or placed in another planned permanent living arrangement. A court may determine that a child's permanency plan is "another planned permanent living arrangement" *only if* the Title IV-E agency documents for the court a compelling reason why every other permanency goal, including reunification, adoption, guardianship, or placement with a fit and willing relative, is not in the child's best interest.⁴⁶ Effective September 29, 2015, a court may not determine another planned permanent living arrangement (APPLA) to be the "permanency plan" for any child younger than 16 years of age.⁴⁷ (For further description of APPLA and additional related permanency plan provisions, see "Requirements for Youth in Care with the Permanency Plan "APPLA.")

For an overview of all case review system requirements, including what must be included in case plans, periodic (six-month reviews) and permanency hearings, see **Figure 2** at the end of this report.

⁴³ Section 471(a)(16) and Section 475(5)(B) of the SSA. An administrative review must be conducted by a panel of appropriate individuals, at least one of whom is not involved in the delivery of services to the child or the parent, and it must be open to the participation of the child's parents. See Section 475(6).

⁴⁴ *Child Welfare Policy Manual*, Section 8.3C.1 Q&A 2.

⁴⁵ *Child Welfare Policy Manual*, Section 8.3C.1 Q&A 3.

⁴⁶ Section 475(5)(C)(i) of the SSA as required under the Title IV-E plan by 45 C.F.R. 1356.21(f); The permanency hearing must be held in a family, juvenile, tribal or another court of competent jurisdiction or be conducted by a court-appointed administrative body.

⁴⁷ The effective date of this amendment is delayed until September 29, 2017 for any child in foster care under the responsibility of a tribal entity (whether directly or under supervision of the state). Additionally, a state may have additional time to meet this requirement if HHS determines the state needs to enact legislation (other than appropriations) to come into compliance. See Section 112 of P.L. 113-183.

Ensure Timely Placement in a New Permanent Family When Appropriate

The law permits Title IV-E agencies to make efforts to find an adoptive or guardianship placement for a child even while efforts to reunite a child and his/her family continue. This is called concurrent planning.⁴⁸ When the permanency hearing determines that a child cannot be returned home, then the Title IV-E agency must make reasonable efforts to find a new permanent home for the child in a timely manner.⁴⁹ Outside of reunification, the law suggests three additional permanent family settings: adoption, legal guardianship, or placement with a fit and willing relative.⁵⁰

For purposes of measuring how successful states are in achieving timely reunifications, HHS counts children who are reunited with their parents and those who are formally discharged from care to live with a relative (but not via legal guardianship) as reunited.⁵¹ During FY2013, 59% of children who left care did so to be reunited with their families, including 51% who were reunited with parents (or other caretaker from whom they had been removed) and 8% who left care to live with another relative.⁵²

Adoption has been considered the best outcome for many children if they cannot be reunited, and a number of Title IV-E plan requirements support timely placement for adoption. Under the laws of most states, termination of parental rights (TPR)—a legal process that strips a parent of any rights or responsibilities to a child—is a prerequisite to adoption.⁵³ Unless certain

Requirements Related to Seeking Termination of Parental Rights (TPR)

WHEN to FILE for TPR: Unless an exception (as listed below) applies, a Title IV-E agency must file (or join) a petition for TPR of a child's parent for any child

- who has been in foster care for 15 of the last 22 months;
- who has been found by a court to be an “abandoned infant”; or
- whose parent has been found by a court to have
 - committed murder or voluntary manslaughter against the child's sibling;
 - aided, abetted, conspired, or solicited to commit such a murder or voluntary manslaughter; or
 - committed felony assault that resulted in serious bodily injury to the child or another child of the parent.

EXCEPTIONS: If any of the following apply, the Title IV-E agency is not required to file a petition for TPR:

- The Title IV-E agency has documented in the child's case plan (available for court review) a compelling reason why filing for TPR is not in the child's best interest; or
- The Title IV-E agency has not provided services to the child and family that, as spelled out in the child's case plan, are necessary for the family to be reunited. (This exception is not available if a court has previously ruled that reasonable efforts to reunite a child and his/her family are not necessary.)
- The child is being cared for by a relative (state option).

Source: Section 475(5)(E) of the Social Security Act.

⁴⁸ Section 471(a)(15)(F) of the SSA.

⁴⁹ Section 471(a)(15)(C) of the SSA.

⁵⁰ See Section 475(5)(C)(i) and Section 422(b)(8)(iii) of the SSA.

⁵¹ See HHS, ACF, ACYF, Children's Bureau, *Child Welfare Outcomes: 2007-2010* (June 2012), p. 28.

⁵² HHS, ACF, ACYF, Children's Bureau, *The AFCARS Report*, No. 21, preliminary estimates for FY2013 as of July 2014 available at <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport21.pdf>

⁵³ “Customary adoption,” which does not require TPR, may be recognized by tribal authorities as well as some states. For example in 2010, California amended its law to recognize tribal customary adoptions. HHS permits customary (continued...)

exceptions apply, Title IV-E agencies are required to initiate (or join) a petition to initiate TPR proceedings in the case of any child who has been in foster care for a certain length of time, is an abandoned infant, or whose parent has committed certain crimes. (See text box for details.) Simultaneous with filing for TPR, the Title IV-E agency must begin the work of identifying, preparing, and approving a qualified adoptive family for the child. While federal law spells out specific instances when a Title IV-E agency must initiate efforts to achieve TPR, it does not dictate that TPR be accomplished in any given case. The TPR process, like family law matters generally, is governed by state laws, and all states have established standards to determine when parental rights may be involuntarily severed.⁵⁴

Additionally, Title IV-E agencies must follow other policies or procedures to ensure availability of adoptive homes without regard to race or geography and to notify prospective adoptive parents of potential tax benefits. Specifically, under the Title IV-E plan, state child welfare agencies

- may not delay or deny an adoption (or foster care placement) due to the race, color, or national origin of a prospective foster or adoptive parent of a child.⁵⁵
- may not deny or delay placement of a child for adoption if the placement is outside the jurisdiction of that agency (e.g., across state or county lines).⁵⁶
- must have procedures for “timely and orderly” placement of children across state lines, including procedures to process and return an out-of-state home study request within 60 days of its receipt from another Title IV-E agency.⁵⁷
- must inform any individual who is adopting a child from foster care (or any individual that the state learns is considering such an adoption) of their potential eligibility for the federal adoption tax credit.⁵⁸

As an alternative placement for children who cannot return home and for whom adoption is not appropriate, states may elect to enter into a kinship guardianship assistance agreement with a relative caregiver of a child who formerly served as the child’s foster parent, who has committed to permanently care for the child, and who has assumed legal guardianship of the child. Unlike adoption, establishment of legal guardianship does not require termination of parental rights (TPR) of the child’s parents. States that elect to offer Title IV-E kinship guardianship must amend their Title IV-E plan to say they will enter into these agreements. (As of September 2014, 30 states and one tribe had an approved Title IV-E plan that included provision of kinship guardianship, and an additional state had submitted a plan amendment seeking to provide this assistance.)⁵⁹ Further, for each child whom the state determines that the permanency plan is kinship guardianship, the state must include certain findings in the child’s written case plan

(...continued)

adoptions—when sanctioned by state or tribal law—to meet the eligibility criteria for federal adoption assistance under Title IV-E. See HHS, ACF,ACYF, Children’s Bureau, *Child Welfare Policy Manual*, Section 8.2B.11, Q&A 2.

⁵⁴ Child Welfare Information Gateway, “Grounds for Involuntary Termination of Parental Rights,” State Statutes Series (February 2010).

⁵⁵ Section 471(a)(18) of the SSA.

⁵⁶ Section 471(a)(23) of the SSA.

⁵⁷ Section 471(a)(25) and (26) of the SSA.

⁵⁸ Section 471(a)(33) of the SSA. For more information on this federal tax benefit, see CRS Report RL33633, *Tax Benefits for Families: Adoption*, by Noah P. Meyerson.

⁵⁹ For additional information on Title IV-E kinship guardianship assistance see the resources on HHS, ACF,ACYF, Children’s Bureau website <http://www.acf.hhs.gov/programs/cb/focus-areas/guardianship>.

regarding the appropriateness of guardianship (instead of reunification or adoption), efforts to discuss the guardianship with the child's parent, reasons for any separation of siblings during the placement, and the child's eligibility for Title IV-E kinship guardianship assistance.

Ensure the Health Care and Education Needs of Children in Foster Care Are Addressed

The Title IV-E agency may not expend Title IV-E program funds to provide education or meet the medical needs of a child.⁶⁰ However, it is required to maintain a child's health and education record, ensure a school-age child's enrollment in elementary or secondary education, and plan for the educational stability of each child in foster care. Separately, under the Title IV-B, Subpart 1 program (Stephanie Tubbs Jones Child Welfare Services), a state must ensure that the state child welfare agency and the agency that administers Medicaid in the state develop a health oversight plan for each child in foster care. This requirement is not a part of the Title IV-E plan and so is not discussed further here. However, it effectively applies to all Title IV-E agencies because in order for a state child welfare agency to receive the approval of HHS to operate a Title IV-E plan, it must also have an approved Child Welfare Services plan under Title IV-B, Subpart 1.⁶¹

What Must Be Included in a Health and Education Record?

The most recent information available regarding

- the names and addresses of a child's health and educational providers;
- the child's grade level, school performance, and school records;
- the child's immunization records, medications, and any known medical problems; and
- any other health or education information deemed relevant by the child welfare agency.

Source: Section 475(1)(C) of the Social Security Act.

Health and Education Record

The state must have procedures to regularly review and update the health and education record of a child in foster care, and it must provide a copy of this health and education record to the foster parent, or other foster care provider, of each child in foster care at the time the child is with that foster parent or provider.⁶² Some information available suggests that states do not always compile these records, or do not compile them completely and, further, that the record is not always supplied to a foster parent.⁶³ Ensuring that necessary information is available to the child welfare

⁶⁰ See CRS Report R42378, *Child Welfare: Health Care Needs of Children in Foster Care and Related Federal Issues*, by (name redacted) et al. While Title IV-E funds may not be used to provide health care services to children receiving assistance, Title IV-E does provide that any child who is receiving Title IV-E assistance is categorically eligible for Medicaid. (Section 473(b)(1) and (3) of the SSA.) States are also required to ensure that any adopted child who is determined to have special needs (related to medical, mental health or rehabilitative treatment needs), and who is not otherwise eligible for Title IV-E assistance, is provided health care coverage under Medicaid or a comparable publicly funding program. (Section 471(a)(21) of the SSA).

⁶¹ For more information on the health oversight plan see CRS Report R42378, *Child Welfare: Health Care Needs of Children in Foster Care and Related Federal Issues*, by (name redacted) et al.

⁶² Section 475(1)(C) and 475(5)(D) of the SSA, as required under the Title IV-E plan by Section 471(a)(16) and 45 C.F.R. 1356.21(f).

⁶³ See HHS, OIG, "Children's Use of Health Care Services While in Foster Care: Common Themes," Memorandum to Susan Orr, Associate Commissioner for the Children's Bureau, ACF and Dennis G. Smith, Director of Centers for (continued...)

agency in a manner consistent with federal privacy laws related to sharing medical and educational information may require planning, cross-agency communication and cooperation, court facilitation, and/or clarifying state laws and regulations.⁶⁴ The Uninterrupted Scholars Act (P.L. 112-278), enacted in January 2013, addressed this concern with regard to education records. Specifically, it amended the federal education privacy law (known as the Family Educational Rights and Privacy Act, or FERPA) to permit educational agencies to share education records of children in foster care with an agency caseworker or other representative of a state or tribal child welfare agency (that is legally responsible for the child without first securing the consent of the child's parent). The law also permits educational release of these records (without additional notice to the child's parent) if a judge orders the information released as part of a child abuse and neglect or dependency hearing to which the child's parent is a party. The education information received must only be used by the child welfare agency to address the educational needs of the child in foster care.⁶⁵

Education Attendance and Stability

A state must provide assurance to HHS that school-age children who are receiving Title IV-E assistance and are without a high school diploma or equivalent certification are enrolled in elementary or secondary school.⁶⁶ They must also take certain steps to ensure the educational stability of each child who is entering foster care or who is moving to a new home or group placement setting while in foster care. Federal law provides that state child welfare agencies must assure coordination with local educational agencies (LEAs), but there is no comparable requirement for LEAs (or state educational agencies) to coordinate with child welfare agencies on these issues. However, HHS and the U.S. Department of Education (ED) have sought to engage both agencies to meet the educational needs of children

What is an Educational Stability Plan?

An educational stability plan must be a part of each child's written case plan and must assure that the appropriateness of the school a child is currently enrolled in, and its proximity to the foster family home or group setting proposed for the child, is taken into consideration.

Once the foster family home or group setting is determined, the Title IV-E agency must coordinate with the appropriate local educational agencies (LEAs) to ensure a child can remain in the school he or she was enrolled in prior to the foster care placement OR, if this is not in the child's best interest to enable the child's immediate enrollment in a new school with all records transferred immediately.

Source: Section 475(1)(G) of the Social Security Act.

(...continued)

Medicare and Medicaid Services, from Brian Ritchie, Acting Deputy Inspector General for Evaluation and Inspections, July 2005 (OEI-07-00-00645).

⁶⁴ See resources at "Data and Information Sharing," Legal Center for Foster Care and Education, ABA Center on Children and the Law at <http://www.fostercareandeducation.org/AreasofFocus/DataInformationSharing.aspx>; and Judicial Council of California, Administrative Office of the Courts (AOC) Briefing, *Sharing Information About Children in Foster Care: Health Care Information*, Center for Families, Children and the Courts, San Francisco: August 2010; see also HHS, Office of Civil Rights, "Understanding HIPAA Privacy" online resource at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html>.

⁶⁵ U.S. Department of Education, "Guidance on the Amendments to the Family Educational Rights and Privacy Act by the Uninterrupted Scholars Act," May 2014. See also "How Can Child Welfare Agencies Access Education Records in Compliance with the Family Educational Rights and Privacy Act," ABA Center on Children and the Law.

⁶⁶ Section 471(a)(30) of the SSA. The state does not have to assure enrollment of a child with a medical condition that prohibits this enrollment. However, if the child is receiving Title IV-E assistance while in foster care, the state must document, and regularly update, information regarding this medical condition in the child's case plan. See also HHS, ACF, ACYF, Children's Bureau, PI-10-11, issued July 2009, Section E, specifying that this case plan documentation is not necessary for children receiving Title IV-E adoption or kinship guardianship assistance.

in foster care, alerting state education and child welfare leaders to the education planning and stability requirements in an August 2011 letter; co-hosting a foster care and education summit in November 2011 to bring together representatives of state child welfare, education, and court systems to plan for cross-system collaboration to meet the educational needs of children in foster care; and issuing a new joint letter in May 2014. That most recent letter noted that while the “educational stability requirements of the Fostering Connections Act apply most directly” to state child welfare agencies, “compliance is contingent on routine coordination” between those agencies and local educational agencies (LEAs).⁶⁷

Under the Title IV-E program, states may claim federal reimbursement for a part of the cost of transportation necessary to enable a Title IV-E eligible child to remain in the school he/she attended prior to entering foster care or moving to a new placement in foster care. States may seek reimbursement of these transportation costs as part of the Title IV-E program administrative costs they submit to HHS, or, since the enactment of the Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351), as a part of the child’s foster care maintenance payment.⁶⁸ Among 50 state child welfare agencies that responded to a recent survey, 40 reported that their agency “typically” pays transportation costs to enable a child to remain in his/her school of origin (when this is in the child’s best interest). Nearly all of these (37) reported that the agency sought federal Title IV-E funding (reimbursement) for these transportation costs.⁶⁹ States may not claim Title IV-E reimbursement for these school transportation costs on behalf of children in foster care who do not meet the Title IV-E foster care eligibility requirements.

State child welfare agencies have long been required to take into account the proximity of a child’s education setting when placing a child in foster care. The additional requirements related to considering the appropriateness of the setting and assuring coordination with LEAs were added to the law in 2008 (as amended in 2011).⁷⁰ The performance outcome: “Children receive appropriate services to meet their educational needs,” was determined achieved in 87% of all child welfare cases reviewed (across all states) as part of the 2007-2010 federal Child and Family Services Review (CFSR).⁷¹ The review found that states were more successful at achieving this outcome for children who were in foster care (91%) than for children served in their own homes (72%). Common challenges to achieving this education outcome were reported as failure to assess a child’s educational needs (identified in 30 states); failure to address a child’s educational needs (identified in 23 states); and “challenges in maintaining or coordinating educational services for children in foster care, due in part to a lack of communication among schools and

⁶⁷ The U.S. Education Department has established a “Students in Foster Care” website with information on the education stability requirements, and other relevant policy: <http://www2.ed.gov/about/inits/ed/foster-care/index.html>.

⁶⁸ HHS, ACF,ACYF, Children’s Bureau, “Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008,” ACYF-CB-PI-10-11, issued July 9, 2010, Section E.

⁶⁹ Kerry DeVooght, Megan Fletcher and Hope Cooper, *Federal, State and Local Spending to Address Child Abuse and Neglect in SFY 2012*, Child Trends, with support from Casey Family Programs and the Annie E. Casey Foundation, September 2014, p.19. Among the 37 states that made Title IV-E claims for these transportation costs, 23 sought this federal reimbursement exclusively as a foster care maintenance payment claim, seven states made the claims as either administrative or foster care maintenance costs, and seven states made the claims exclusively as an administrative cost.

⁷⁰ P.L. 101-239 (1989) required states to consider proximity of education setting at placement. The appropriateness and education stability provisions were added in 2008 by (P.L. 110-351) and were amended in 2011 (P.L. 112-34) to require that they apply not only at an initial foster care placement, but also any time a child in foster care is moved.

⁷¹ HHS, ACF,ACYF, Children’s Bureau, *Federal Child and Family Services Reviews: Aggregate Report, Round 2, Fiscal Years 2007-2010*, December 16, 2011, p. 13, p. 53 and Figure 53.

with the [child welfare] agency, delays in transferring Individual Educational Plans and credits, and delays in enrollment” (identified in 24 states).⁷²

Help Youth Transition Successfully From Foster Care to Adulthood

Youth who are discharged from foster care when they reach the age of majority, and without reunification or placement in a new permanent family, are said to have “aged-out” or been “emancipated” from care. These youth have lower educational attainment and less positive employment and other life outcomes than youth generally.⁷³ Most Title IV-E plan requirements apply to all children in foster care, but some are linked to a child’s age. These requirements seek to ensure older children are prepared to be successful when they leave foster care and apply when a youth in care reaches his or her 16th birthday or ages-out of care.

The Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183) expands the set of Title IV-E plan requirements addressed specifically to older children in care by lowering the age at which they apply to 14 and by adding new requirements that must be met with regard to those youth and to youth who age-out of care. Further, the law changes the language of current policy to indicate these services (as well as those previously provided for in the law) are intended to

Title IV-E Plan Requirements Specific to Youth

Text in *italics* reflects changes made by P.L. 113-183, generally effective as of September 29, 2015.

For a youth in care at age 16 or older (*age 14 as of September 29, 2015*)

- include in the youth’s case plan a written description of the services and programs to help him/her transition to independent living (*transition to successful adulthood*);
- ensure that the court, as part of the youth’s annual permanency hearing, determines any services necessary to assist the child to make a transition from foster care to independent living (*transition from foster care to successful adulthood*); and
- *engage youth in development of, and any revisions to, his or her case plan and, permanency plan, and permit youth to select up to two people to be consulted in development of each of those plans;*
- *include in the case plan a list of certain rights of the youth and a signed acknowledgement by the youth that he or she has a copy of this list and that the rights have been explained in an age appropriate way;*
- provide, free of charge, a copy of any credit report pertaining to the youth (in each year that he or she remains in care) along with assistance in resolving any inaccuracies in the report.

For youth exiting care because of age

- at the time of exit, provide, free of charge, a copy of the child’s health and education record;
- *before youth exits care (and if youth has been in care at least 6 months and is eligible for the document) provide youth with his or her U.S. birth certificate, a social security card, and a driver’s license or other state-issued identification card.*
- within the 90-day period before this exit from care, help the youth develop a transition plan that is personalized at the direction of the youth and includes specific options concerning housing, health insurance, education, mentors, support services, workforce and employment services, as well as information on health care power of attorney; and
- ensure that the court consults with the youth in an age appropriate manner in any permanency or other hearing addressing the transition to independent living and the transition plan.

Source: Section 471(a)(16) and 45 C.F.R.1356 .21(f); Section 475(1)(D), 475(5)(C)(i),(D),(H) and (I); and 475A(b) (effective September 29, 2015, and as added by P.L. 113-183) of the Social Security Act.

⁷² Ibid, pp. 32-33.

⁷³ CRS Report RL34499, *Youth Transitioning from Foster Care: Background and Federal Programs*, by (name redacted).

ensure a youth may make a successful transition from foster care to adulthood. The effective date for each of these P.L. 113-183 changes is generally September 29, 2015.⁷⁴

Among other things, the youth-specific requirements added by P.L. 113-183 focus on youth engagement and empowerment. They require that youth be informed of certain rights they have with regard to education, health, visitation, court participation, access to key documents if aging out, and the “right to stay safe and avoid exploitation.” Further, in addition to a prior focus on transition services planning for older youth in care, the new provisions added by P.L. 113-183 explicitly incorporate youth participation in both development and revision of all case and permanency planning done on their behalf, including by allowing the youth to select up to two individuals—who are not the youth’s foster parent or caseworker—to be a part of the youth’s case planning and permanency planning. (The state may reject an individual so selected if it has good cause to believe the individual would not act in the child’s best interest.)

The new requirements also focus on getting an earlier start on equipping youth to be successful once they leave foster care (requirements apply at age 14 versus age 16) and enhancing their ability for success when they age out of care. Currently states are required to provide a credit report, annually, to each youth in care who is age 16 or older.⁷⁵ This requirement, which will apply to youth in care at age 14 or older as of September 29, 2015, is intended to help identify and correct any errors in the report that result from identity fraud.^{76,77} Additionally, states are now required to work with each youth who is in foster care and is within 90 days of aging out of that care to develop a transition plan that includes specific options regarding housing, education, mentoring, support services, employment and workforce support services, health insurance, and health care decision making.⁷⁸ Further, states are currently required to provide any youth aging out of care a free copy of his or her health and education record.⁷⁹ As part of its effort to aid a youth’s successful transition to adulthood, P.L. 113-183 also requires states to provide additional key documents. As of September 29, 2015, states must also ensure that no youth who is aging out leaves care without an official or certified copy of his or her U.S. birth certificate, an official Social Security card, and a state-issued driver’s license or identification card that meets the

⁷⁴ HHS may permit a state limited additional time to comply with the new requirements if it determines the state needs to enact legislation (other than appropriations) to meet the new requirement. For relevant effective dates see Section 112(c), Section 113(F) and Section 114(b) of P.L. 113-183. Further, if a child is in foster care and under the responsibility of an Indian tribe (either directly or under supervision of a state), the new restrictions and requirements related to use of APPLA do not apply until September 30, 2017.

⁷⁵ Section 475(5)(i) of the Social Security Act as added in 2011 by the Child and Family Services Improvement and Innovation Act of 2011 (P.L. 112-34). The Fair Credit Reporting Act requires national credit reporting agencies, which are private agencies, to provide one free credit report per person on an annual basis. Adults may access this report online at <http://www.annualcreditreport.com>. However, that system may not be used for individuals under 18.

⁷⁶ Compliance with this requirement, which was added to the law in November 2011, was delayed (until August 13, 2012) after HHS learned that the standard online procedures for requesting a credit report for an adult cannot be used for a minor and that separate procedures would have to be established with each of the three major national credit reporting agencies (Equifax, Experian, and TransUnion).

⁷⁷ Each of the private credit agencies has established separate procedures. Therefore, to meet the Title IV-E plan requirement to provide *any* report that pertains to a youth in care (age 16 or older), the state child welfare agency is required to contact each of these agencies for each child and provide all of the specific information requested. If a child is in foster care after his or her 18th birthday, (and the state provides Title IV-E foster care assistance to youth of that age), then the state must continue to assist the youth in obtaining any annual credit report with his/her name. However, the youth may request his/her own report. For more information, see HHS, ACF, ACYF, Children’s Bureau, PI-12-07, “Credit Report; Extended Deadline,” issued May 8, 2012. <http://www.acf.hhs.gov/programs/cb/resource/pi1207>.

⁷⁸ Section 475(5)(H) added by P.L. 110-351 (2008) as amended by P.L. 111-148 (2010).

⁷⁹ Section 475(5)(D), as added by the Safe and Timely Interstate Foster Care Placement Act of 2006 (P.L. 109-239).

standards of the REAL ID Act. States are only required to provide these documents, however, if a youth is eligible for the document and has been in foster care for at least six months. (See text box “Title IV-E Plan Requirements Specific to Youth.”)

Requirements for Youth in Care with the Permanency Plan “APPLA”

P.L. 113-183 further amended federal child welfare policy to provide that no child in foster care may be assigned a permanency plan of “another planned permanent living arrangement” (APPLA) unless they are at least 16 years of age. Further, for youth who are assigned that permanency plan, it adds an additional set of case review procedures. These APPLA provisions are effective on September 29, 2015 (or September 29, 2017, for youth in foster care who are under responsibility of a tribal entity).

The APPLA designation was added to the law by the Adoption and Safe Families Act (ASFA, P.L. 105-89). In that law, Congress sought to strengthen the permanency planning requirements in child welfare policy and to end “long-term” foster care that resulted from a lack of state effort or planning for permanency. As part of this, the addition of APPLA to the law appears to have been intended to ensure that deliberate thought and reasoning preceded any long-term stay for a child in foster care.⁸⁰ Children who are assigned APPLA as a permanency plan may live in any kind of foster care setting (e.g., foster family home, group home, or institution), and they are likely to age out of care. That is because unlike the preferred permanency plans—reunification, adoption, legal guardianship, or placement with a fit and willing relative—the APPLA plan does not include any specific pathway (or goal) for how a child will leave that foster care setting to live with a permanent family. As of the last day of FY2013, states reported a little more than 9% of children in foster care (close to 37,000) had case plan goals that did not include a specific pathway out of foster care to a permanent family.⁸¹

Title IV-E Plan Requirements Specific to Youth Assigned APPLA as Permanency Plan

As added by P.L. 113-185, generally effective September 29, 2015.

For youth assigned permanency plan of APPLA (must be at least 16 years of age)

- ensure that at each annual permanency hearing the court asks the youth what his or her desired permanency outcome is and re-determines whether APPLA remains the most appropriate plan;
- document at each permanency hearing the continued efforts being made to identify family members of the child and/or to find a new permanent family for the child;
- at each 6-month hearing for the youth, review the steps the agency is taking to ensure that his or her foster caregiver is using a reasonable and prudent parenting standard and ascertain whether the youth has regular opportunities to engage in age and developmentally appropriate activities (including by asking the youth); at each annual permanency hearing document the steps for youth to engage in age or developmentally appropriate activities.

Source: Section 471(a)(16) and 45 C.F.R. 1356.21(f); Section 475(5)(C)(i) and Section 475A(a) as added by P.L. 113-183) of the Social Security Act.

⁸⁰ Federal regulation developed to implement ASFA (45 C.F.R. 1356.21(h)(3)) provide several scenarios when APPLA might be the appropriate permanency plan for a child in foster care. The regulation cites the following scenarios when APPLA may be appropriate: (1) an older teen specifically requests a permanency plan of emancipation from foster care; (2) parent and child are strongly bonded but the parent is unable to care for the child because of an emotional or physical disability and the child’s foster parents have agreed to raise the child to maturity and to enable visits with the disabled parent; or (3) a tribe has identified another planned permanent living arrangement for the child.

⁸¹ Based on state data reported via AFCARS as of July 2014 and provided to CRS by HHS, ACF, ACYF, Children’s Bureau. The “APPLA” designation was added to federal law after AFCARS data reporting regulations were finalized and the regulations do not include this term. Data cited here refer to children who are reported to have case plan goals of “long term foster care” (4.3%, n=17,182) or “emancipation” (4.8%, 19,499).

In addition to prohibiting APPLA as the permanency plan for youth age 16 or older, P.L. 113-183 established additional requirements (see text box) that are designed to ensure that the state child welfare agency continues to look for a permanent family for children with an APPLA designation, the court continues to revisit whether APPLA is an appropriate permanency plan for the child, the child is consulted about his/her desired permanency outcome, the youth's foster caregiver applies the reasonable and prudent parent standard, and the youth has regular and ongoing opportunities to engage in age and developmentally appropriate activities.⁸²

Responding to Sex Trafficking of Child Welfare-Involved Children and Youth and to Youth Who Run Away from Foster Care

The Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183) also requires state child welfare agencies to develop specific protocols and reporting practices related to sex trafficking of children in foster care (or children who are otherwise involved in the child welfare system). It also requires those agencies to develop specific protocols and reporting procedures designed to improve child welfare agencies' response to children who run away from foster care. The experiences of children who enter foster care, including those who run away from foster care, may place them at higher risk to become a victim of sex trafficking.⁸³ Some state child welfare agencies have begun to craft specific responses to this concern. At the same time, little definitive information on the scope of sex trafficking among children served by the child welfare agency is available.

Identifying, Determining Services for, and Reporting on Victims and Those at Risk of Victimization

P.L. 113-183 requires state child welfare agencies to develop and implement procedures to identify, document in agency records, and determine appropriate services for certain children or youth who are victims of sex trafficking, or at risk of being such victims. For the purposes of these requirements, a sex trafficking victim is as that term was earlier defined by Congress in the Trafficking Victims Protection Act (TVPA). These new sex trafficking-related procedures must also ensure relevant training for caseworkers and are to be developed by the state child welfare agency in consultation with state and local law enforcement, juvenile justice systems, health care providers,

Definition of Sex Trafficking Victim

The Trafficking Victims Protection Act (TVPA) defines a "sex trafficking victim" as an individual subject to the "recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act" or who is a victim of a "severe form of trafficking in persons" in which "a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the act is under 18 years of age."

Source: Section 101(b) of P.L. 113-183, which adds the TVPA definition to Section 475 of the Social Security Act

⁸² See Section 112 of P.L. 113-183, which includes the additional APPLA-specific case planning and review requirements in a new Section 475A of the Social Security Act. For additional information about requirements included in P.L. 113-183, see CRS Report R43757, *Child Welfare and Child Support: The Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183)*, by (name redacted), (name redacted), and (name redacted).

⁸³ For information about sex trafficking of children generally, see CRS Report R41878, *Sex Trafficking of Children in the United States: Overview and Issues for Congress*, by (name redacted), (name redacted), and (name redacted).

education agencies, and organizations with experience in dealing with at-risk children and youth. P.L. 113-183 provides that these procedures must be developed by September 29, 2015, and implemented no later than September 29, 2016.⁸⁴

The law further requires state child welfare agencies to report to law enforcement authorities immediately, or in no case later than 24 hours after they receive information about child or youth victims of sex trafficking. This reporting provision is effective beginning no later than two years after the bill's enactment (September 29, 2016). Additionally, within three years of the law's enactment (September 29, 2017), state child welfare agencies are required to annually report to HHS the total number of children and youth who are sex trafficking victims.⁸⁵

Children and Youth to Whom the Procedures Apply

The procedures to identify, document in agency records, and determine services for victims of, or those at risk of, sex trafficking must apply to all children in the care, placement, or supervision of the state child welfare agency, including

- children who are in foster care and under age 18 (or up to any age under 21, if the state has elected to serve such older youth with Title IV-E foster care assistance);
- children (under age 18) who are not in foster care but for whom the agency has an open case file;
- youth (up to age 21, or 23 in limited circumstances) who are receiving services under the Chafee Foster Care Independence Program (CFCIP),⁸⁶ and
- children who run away from foster care, provided they have not reached the age at which the state ends Title IV-E assistance (or have not been formally discharged from care).

In addition, a state *may elect* to use these procedures to identify individuals up to the age of 26 who are victims, or at risk of becoming victims, of sex trafficking, without regard to whether the youth was ever in foster care.⁸⁷

Locating and Serving Children Who Run Away from Foster Care

On a given day, states report several thousand children in foster care are in runaway status—meaning they ran away from their foster care home, group home, or institution. On the last day of FY2013 (September 30, 2013) states reported 4,450 children (1.1% of all children in care on that day) had run away from foster care. Further, they reported that during FY2013 more than 1,000 children who had run away from foster care were formally discharged from the responsibility of the state child welfare agency.⁸⁸ The population of children and youth who run away or are missing from care is varied. However, youth who run from care are at increased risk for sexual

⁸⁴ See Section 101 of P.L. 113-183, which amends Section 471(a)(9) of the Social Security Act.

⁸⁵ See Section 102 of P.L. 113-183 which adds a new paragraph 32 to Section 471(a) of the Social Security Act.

⁸⁶ The Chafee Foster Care Independence program provides federal funding to states for services to assist youth likely to age out of foster care and youth age 16 or older who left foster care for adoption or kinship guardianship, in their transition to adulthood.

⁸⁷ See Section 101 of P.L. 113-183, which amends Section 471(a)(9) of the Social Security Act.

⁸⁸ State data reported via AFCARS as of July 2014 and provided to CRS by HHS, ACF, ACYF, Children's Bureau.

and criminal victimization; they may engage in risky or criminal behaviors; and because they likely are missing schooling, they hinder their ability for future success.⁸⁹

P.L. 113-183 requires each state child welfare agency (as part of its Title IV-E plan) to develop protocols for (1) expeditiously locating any child missing from foster care; (2) determining the primary factors contributing to the child running away (or otherwise going missing from care) and responding to those factors in the current and subsequent placements; (3) learning about the child's experience while away from care, including determining if the child is a possible victim of sex trafficking; and (4) reporting any related information as required by HHS. These protocols are to be developed and implemented as of September 29, 2015.⁹⁰

P.L. 113-183 further requires state child welfare agencies to report information it receives on missing and abducted children and youth to the National Center on Missing and Exploited Children (NCMEC) and to law enforcement authorities for inclusion in the FBI's National Crime Information Center (NCIC) database.⁹¹ These reports must be made immediately (and in no case later than 24 hours) after the information is received. Specifically this information must be reported if the information concerns a missing or abducted child or youth who is in foster care (including children who run from care), not in care but being served by the child welfare agency otherwise, or receiving services under the Chafee Foster Care Independence Program. State child welfare agency reporting on missing and abducted children and youth must begin no later than September 29, 2016.

Ensure Program Coordination and Collaboration and Meet Other Administrative Requirements

The Title IV-E plan requirements include additional provisions related to how the program must be administered by a state Title IV-E agency. Among these, the requirement that the Title IV-E agency must also operate a program under Title IV-B, subpart 1 of the Social Security Act is arguably the most significant.⁹² By compelling participation in this program (formally known as the Stephanie Tubbs Jones Child Welfare Services program), federal law effectively requires states to provide nearly all of the same child protections to any child in foster care, regardless of whether the child meets the Title IV-E eligibility criteria.

⁸⁹ For more information, see Mark Courtney, et. al., "Youth Who Run Away from Out-of-Home Care," Issue Brief, Chapin Hall Center for Children at the University of Chicago, March 2005 available at [http://www.chapinhall.org/sites/default/files/publications/ChapinHallDocument\(2\)_6.pdf](http://www.chapinhall.org/sites/default/files/publications/ChapinHallDocument(2)_6.pdf).

⁹⁰ See Section 104 of P.L. 113-183, which adds a new paragraph 35 to Section 471(a) of the Social Security Act.

⁹¹ NCMEC is a non-profit organization that receives federal funding to carry out activities authorized in federal law, including supporting law enforcement agencies and families in missing children and child sexual exploitation cases (Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974). NCIC is a computerized index of information on crimes and criminals that is maintained by the FBI (28 U.S.C. 534).

⁹² This requirement is based on HHS interpretation of the Title IV-E plan requirement at Section 471(a)(2) of the Social Security Act (SSA). See *Child Welfare Policy Manual*, Section 9.1, Q&A 4.

Operation of a Title IV-B, Subpart 1 Program

Since the Title IV-E program was established as part of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), the law has required that the state agency responsible for administering (or supervising the administration of) the Title IV-E program must be the same agency that is responsible for administering the program under what is now Title IV-B, Subpart 1 of Social Security Act.⁹³ In guidance, HHS has noted that “to give this language effect” a Title IV-E agency must operate a Title IV-B, Subpart 1 program.⁹⁴ In practice then, no state may receive approval of its Title IV-E plan without also having a plan approved under Title IV-B, Subpart 1. That plan extends case review protections to all children in foster care (without regard to Title IV-E eligibility), and includes other requirements related to ensuring appropriate services are available to all children in foster care (see text box).

Other Administrative and Planning Procedures

Other administrative procedures required directly under the Title IV-E plan include provisions or procedures for the Title IV-E agency to do the following:

- Operate the program on a statewide basis.⁹⁵
- Establish specific goals for each fiscal year regarding the maximum number of children who at any time in the year will have been in care 25 months or more and describe steps taken to achieve that goal.⁹⁶

Selected Foster Care-Related Requirements in Title IV-B, Subpart 1

- Apply the protections of the case review system to any child in foster care, regardless of their Title IV-E eligibility status.
- Develop a health oversight plan applicable to each child in foster care.
- Establish disaster response procedures that will enable continuity of operations in the event of a disaster.
- Establish standards for content and frequency of caseworker visits with children in foster care which, at a minimum, require monthly, well-planned visits with each child.
- Operate a statewide information system that allows easy determination of the status, demographic characteristics, location, and goals for every child in foster care.
- Describe the agency’s child welfare staff development and training plans.
- Describe the activities the state undertakes to reduce length of time children under age 5 spend in out of home placements.
- Do diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the state who are in need of foster and adoptive homes.
- Eliminate legal barriers to the timely adoptive or permanent placement of children in foster care who are waiting for homes and make effective use of cross jurisdictional resources to facilitate those placements.

Source: Sections 422(b)(4)(B), (7), (8), (10), (15), (16), (17), and (18) of the SSA.

⁹³ Section 471(a)(2) of the SSA.

⁹⁴ *Child Welfare Policy Manual*, Section 9.1, Q&A 4. The policy guidance notes that there is no similar requirement related to the Title IV-B, Subpart 2 program (known as Promoting Safe and Stable Families). Although this policy guidance is presented in the context of approval of a *Tribal* Title IV-E plan, per CRS communication with the Children’s Bureau in August 2012, it is equally applicable to the approval of Title IV-E plans maintained by state child welfare agencies.

⁹⁵ Section 471(a)(3) of the SSA. A tribal agencies with an approved Title IV-E plan must operate their program across the service area defined in its plan. See Section 479B(c)(1)(B) of the SSA.

⁹⁶ Section 471(a)(14) of the SSA.

- Report—to an “appropriate” agency or official—known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child who is receiving aid under Title IV-B or Title IV-E of the Social Security Act.⁹⁷
- Protect the confidentiality of child welfare records by limiting their disclosure as specified in the law.⁹⁸
- Periodically review foster care maintenance payment rates to determine their continued appropriateness.⁹⁹
- Negotiate in good faith with any Indian tribe, tribal organization, or tribal consortia (within the state) that requests development of an agreement with the state Title IV-E agency to enable the tribal entity to administer some or all of the Title IV-E program on behalf of the children who are under authority of that tribal entity.¹⁰⁰
- Allow a fair hearing (before the Title IV-E agency) to any individual whose benefit claim is denied or not acted on promptly.¹⁰¹
- Claim child support payments on behalf of children in foster care (when appropriate) and in doing so, must cooperate with state agencies that administer Child Support Enforcement (Title IV-D of the Social Security Act) and the Temporary Assistance for Needy Families (TANF) block grant (Title IV-A of the Social Security Act).¹⁰²
- Verify the citizenship or immigration status of any child in foster care.¹⁰³

Finally, several Title IV-E plan requirements address coordination of the Title IV-E program with related family assistance, social services, and child welfare-related programs; and establishment and maintenance of merit-based personnel standards.¹⁰⁴ The Title IV-E agency must also ensure it will periodically evaluate activities carried out under the program, arrange for independent audits of the program, and provide reports to HHS as requested.¹⁰⁵

⁹⁷ Section 471(a)(9) of the SSA.

⁹⁸ Section 471(a)(8) of the SSA.

⁹⁹ Section 471(a)(11) of the SSA.

¹⁰⁰ Section 471(a)(32) of the SSA.

¹⁰¹ Section 471(a)(12) of the SSA.

¹⁰² Section 471(a)(17) of the SSA. As provided under the Child Support Enforcement program, the Title IV-E agency must send to the federal government a portion of any child support payment received on behalf of a child who is receiving a Title IV-E foster care maintenance payment and may retain the balance of that payment to reimburse its own spending on the child’s behalf.

¹⁰³ Section 471(a)(27) of the SSA.

¹⁰⁴ Section 471(a)(4) and (5) of the SSA.

¹⁰⁵ Section 471(6)(7) and (13) of the SSA.

Figure 2. Child Protections Offered as Part of the Case Review System

Provisions in *italics* were added or amended by P.L. 113-183 and are effective September 29, 2015.

<p>Case Plan is a written document that –</p> <ul style="list-style-type: none"> • describes the safety and appropriateness of the home or institution where a child is to be placed; • plans for services (for the child, his/her parents, and foster parents) that will improve the conditions in the parent's home and enable the child's safe return OR plans for child's permanent placement; • addresses child's needs while in foster care, and discusses appropriateness of any services provided; • includes the child's health and education record; • plans for the child's educational stability; • if the child's permanency goal is not reunification, documents steps taken by the Title IV-E agency to find a permanent home or other permanent living arrangement for the child; and • if the child's permanency goal is placement with a relative and receipt of guardianship assistance, provides reasons why this is in the child's best interest and discusses other specified findings; • <i>if the child is age 14, is developed (and revised) in consultation with the child (and up to two individuals who are selected by the child); describes programs and services to help prepare the child to transition to successful adulthood; includes a list of the child's rights (regarding education, health, visitation, court participation, access to key documents when aging out, and to staying safe and avoiding exploitation) as well as a signed acknowledgement by the child that the rights have been explained.</i> 	<p>The Case Review System is a set of procedures to ensure the following:</p> <ul style="list-style-type: none"> • Each child in foster care has a case plan designed to achieve his or her placement in a safe, family-like (or the least restrictive) setting appropriate to the child's needs and in close proximity to the child's parents. • The status of each child in foster care is subject to review, no less often than every six months, through an administrative process (open to the participation of the child's parents and conducted by a panel of appropriate people) or by a court. • Each child in foster care has a permanency hearing – held in a court or by a court-administered body – no later than 12 months after the child enters foster care and every 12 months after that while the child remains in foster care. • A child's health and education record is reviewed, updated and a copy is supplied to each foster care provider (at the time of child's placement); • Unless certain circumstances exist, the Title IV-E agency will petition the court to terminate the parental rights of the parents of any child who is an abandoned infant, has been in foster care for 15 of the last 22 months, or whose parent has committed specified crimes against the child or a child's sibling; and, at the same time, will work to identify and approve an appropriate adoptive family for the child. • In any hearing about a child's <i>transition to successful adulthood</i> or any permanency hearing, the court consults with the child in an age-appropriate manner. • For any child age 14 or older, a copy of any credit report concerning him/her is provided to the child, each year until he/she leaves care; assistance is provided in helping the child interpret the report and correct any inaccuracies. • For any child who is exiting care due to age, – a caseworker, with any other appropriate child representatives, helps the child develop a transition plan (within the 90-day period before this exit occurs); and the child is provided certain documents, including a copy of his/her health and education record <i>and (provided he or she has been in care at least 6 months and is eligible for the document), a driver's license or other state –issued ID, a social security card and a copy of his or her official U.S. birth certificate.</i> • The rights of parents – as they relate to a child's removal from the home, a change in the child's placement, and any decision affecting parental visiting privileges – are safeguarded. • Foster parents, relative caregivers, or pre-adoptive parents are provided with notice of any proceeding related to a child in their care and are given a right to be heard at the proceeding. 	<p>Periodic Review must determine –</p> <ul style="list-style-type: none"> • safety of the child; • continued need for and appropriateness of the placement; • extent of compliance with the case plan; • extent of progress made toward alleviating or mitigating cause requiring child's placement in foster care; • a likely date for the child to safely return home, be placed for adoption, or for legal guardianship; and • <i>If the child's permanency goal is another planned permanent living arrangement (APPLA), the steps the agency is taking to ensure the child's foster caregiver uses the reasonable and prudent parent standard and that the child has regular opportunities to participate in age and developmentally – appropriate activities (including by consulting with the child).</i>
<p>Transition Plan must –</p> <ul style="list-style-type: none"> • be personalized at the direction of the youth and include options for housing, health insurance, education, mentors, and employment-related supports and services, along with certain information and options related to health care decisionmaking. 	<p>Permanency Hearing must –</p> <ul style="list-style-type: none"> • determine the permanency plan for the child, including whether, and when, the child will be – returned home, placed for adoption, referred for legal guardianship, placed with a fit and willing relative, or (if state child welfare agency can document that none of these options are in the child's best interest <i>(and only if the child is at least 16 years of age)</i> be placed in another planned permanent living arrangement (APPLA); • if the child is age 14 or older, determine the services needed for a <i>successful transition to adulthood</i>; • if the child will not be returned home, consider in-state and out-of-state placement options; and • if the child is placed out of state, consider if this remains appropriate and in the child's best interest; • <i>if the child's permanency goal is APPLA, include documentation from the state child welfare agency of its ongoing efforts to identify a permanent family for the child and steps the agency is taking to ensure the child's caregiver uses the reasonable and prudent parent standard and the child has regular opportunity to join in age and developmentally-appropriate activities; and ensure that the court asks the child what permanency outcome he or she desires and redetermines whether APPLA remains the best permanency plan for the child.</i> 	

Source: Figure prepared by the CRS based on definitions included in the Social Security Act at Section 475(1) and (5) and, as added by P.L. 113-183, Section 475A.

Note: Before September 29, 2015, requirements that are not in italics and are shown to apply to a child at age 14 or older apply instead to a child at age 16 or older, and references to a transition to a “successful adulthood” are made instead to a transition to “independent living.”

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