



# 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 FY2011, states spent \$12.4 billion under the Title IV-E program and expected to receive federal reimbursement of \$6.7 billion, or 54% of that spending.

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.

Title IV-E plan requirements other than those related to provision of direct financial assistance to eligible children are the focus of this report. 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; (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; and (8) 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 FY2011, states spent \$12.4 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 1 tribe (Port Gamble S'Klallam) have an approved Title IV-E plan.<sup>1</sup>

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 a foster care placement, and that the state either quickly and safely returns them to their families or, if that isn't possible or appropriate, quickly finds another safe and permanent home for them. 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, 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, adoption assistance, or kinship guardianship assistance).<sup>2</sup> 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 served by 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.

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<sup>1</sup> Tribes were first authorized to receive direct federal funding under the Title IV-E program as of FY2010. The Port Gamble S'Klallam tribe received approval of its Title IV-E plan effective with April 1, 2012. As of September 1, 2012, no additional tribes had completed this approval process but several were working toward that goal.

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

The plan must be submitted on a “pre-print” form (rather than as a narrative description). The pre-print form 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.<sup>3</sup>

## **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.” Those activities are, for the most part, described in the Title IV-E plan. The bulk of Title IV-E *foster care* funding is not used to provide direct financial assistance to eligible children through foster care maintenance payments. Rather it is spent on meeting the federal requirements that are detailed in this report. This kind of spending is referred to as “child placement and administrative costs” or, more commonly, simply, “administration.” Information about Title IV-E eligibility and funding for these purposes is outside the scope of this report. However, 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 Emilie Stoltzfus.

## **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).<sup>4</sup> 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.

Readers can find more information about the history, content and conduct of the CFSR on the website of the HHS, ACF, Children’s Bureau, which is the federal agency responsible for ensuring its conduct: <http://www.acf.hhs.gov/programs/cb/monitoring/child-family-services-reviews>. The reviews are conducted in each of the 50 states, the District of Columbia and Puerto Rico. 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. For information on the specific findings from the most recent set of reviews (conducted from 2007-2010) see the 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](http://www.acf.hhs.gov/sites/default/files/cb/fcfsr_report.pdf).

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<sup>3</sup> See “Title IV-E pre-print” at <http://www.acf.hhs.gov/sites/default/files/cb/pi0908.pdf> and subsequent updates at <http://www.acf.hhs.gov/sites/default/files/cb/pi1011.pdf> and <http://www.acf.hhs.gov/sites/default/files/cb/pi1109.pdf>.

<sup>4</sup> Section 1123A of the SSA; 45 C.F.R. 1355.31 et seq.

## 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 core policies and procedures to accomplish the following eight 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** (e.g., by establishing licensing standards for foster family homes and other group or residential settings where foster children live; and 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 six 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; 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 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 including in the case plan of any youth in care at age 16 or older (as appropriate)—a written description of programs and services necessary to help a youth transition to independent living; and 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 coverage, education, employment, mentoring, and other support services).
- **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, establishes 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 1** 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,<sup>5</sup> or tribe.<sup>6</sup> 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.

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<sup>5</sup> 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.) For example, 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 FY2012, 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 little or no Title IV-E claims since FY2003.

<sup>6</sup> 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 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> This case plan must be developed jointly by the Title IV-E agency and the child's parents.<sup>10</sup> In addition, the Title IV-E 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'

### 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.

<sup>7</sup> 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.

<sup>8</sup> 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).)

<sup>9</sup> Section 471(a)(16) and Section 475(1)(A) and (B) of the SSA.

<sup>10</sup> 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.

visiting privileges.<sup>11</sup> (For further information about the contents of the case plan, see **Figure 1** at the end of this report.)

## **Planning for and Otherwise Ensuring Safe and Appropriate Placements**

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.<sup>12</sup>

As part of their Title IV-E plan, state agencies 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.<sup>13</sup> Further, the agency must develop and implement standards to ensure that children in foster care placements, whether with public or private agencies, receive quality services that protect children’s health and safety.<sup>14</sup> Additionally, to ensure the safety of placements and their appropriateness and quality, 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.

### **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, protection of civil rights, and admissions.<sup>15</sup> The standards must be periodically reviewed to ensure their “continued appropriateness”<sup>16</sup> and, since 2000, they must apply to any foster family home setting (whether 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 facilitate 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.<sup>17, 18</sup>

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<sup>11</sup> Section 471(a)(16) of the SSA; 45 C.F.R. 1356.21(f); Section 475(5)(C)(ii) of the SSA.

<sup>12</sup> 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.

<sup>13</sup> Section 471(a)(22) of the SSA.

<sup>14</sup> Section 471(a)(24) of the SSA.

<sup>15</sup> Section 471(a)(10) of the SSA.

<sup>16</sup> Section 471(a)(11) of the SSA.

<sup>17</sup> 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.”

<sup>18</sup> *Ibid.* The 15 states were Alabama, Alaska, Delaware, Florida, Georgia, Kentucky, Minnesota, Mississippi, New (continued...)

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 zero (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.<sup>19</sup>

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 training requirements, or extensions to complete foster parent training, health evaluations, or First Aid and CPR training. States reported granting waivers 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.<sup>20</sup>

## Background checks

Although states may consider background checks as part of their licensing process, the Title IV-E requirement for background checks for prospective foster or adoptive parents and for prospective relative guardians is separately established in the law. It may not be waived.<sup>21</sup> 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.<sup>22</sup>

### **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.

(...continued)

Mexico, Oklahoma, Puerto Rico, Texas, West Virginia, Wisconsin and Wyoming.

<sup>19</sup> Ibid. Eleven states that permitted waivers were not able to report on frequency with which with the waivers were granted.

<sup>20</sup> Ibid, p. 8.

<sup>21</sup> 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.

<sup>22</sup> 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 (continued...)

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 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.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> Further, within 30 days after a child’s removal from the custody of his or 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.<sup>26</sup> 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).<sup>27</sup>

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(...continued)

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.

<sup>23</sup> Section 471(a)(20)(B) of the SSA.

<sup>24</sup> Rebecca L. Hegar and Maria Scannapieco, “Kinship Care: Preservation of the Extended Family,” pp. 518-535 in Gerald P. Mallon and Peg McCart Hess, editors, *Child Welfare for the 21<sup>st</sup> Century*, New York: Columbia University Press, (2005).

<sup>25</sup> Section 471(a)(19) of SSA.

<sup>26</sup> Section 471(a)(29) of the SSA. This requirement is subject to exceptions due to family or domestic violence.

<sup>27</sup> 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).

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 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).<sup>28</sup>

In addition to highlighting placement with adult relatives, federal law requires states to help children maintain connections with their siblings. Specifically, as of October 2009, states are 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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup>

## **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.<sup>32</sup> 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

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<sup>28</sup> 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.

<sup>29</sup> Section 471(a)(31) of the SSA.

<sup>30</sup> 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.

<sup>31</sup> *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).

<sup>32</sup> 45 C.F.R. 1321(g).

entering or in foster care.<sup>33</sup> An administrative (or court) review of the case plan must occur no less often than once every six months. The 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.<sup>34</sup> A child's case plan should be updated as necessary following each six-month review.<sup>35</sup>

There is no requirement that a court review or approve a child's overall case plan.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup>

For an overview of case review system requirements, including what must be included in case plans, periodic (six-month reviews) and permanency hearings, see **Figure 1** at the end of this report.

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<sup>33</sup> Section 471(a)(16) and Section 475(1) of the SSA.

<sup>34</sup> 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).

<sup>35</sup> *Child Welfare Policy Manual*, Section 8.3C.1 Q&A 2.

<sup>36</sup> *Child Welfare Policy Manual*, Section 8.3C.1 Q&A 3.

<sup>37</sup> 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.

<sup>38</sup> *Ibid.*

## 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.<sup>39</sup> When the permanency hearing determines that a child can not 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.<sup>40</sup> Outside of reunification, the law suggests three additional permanent family settings: adoption, legal guardianship, or placement with a fit and willing relative.<sup>41</sup>

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.<sup>42</sup> During FY2011, 60% of children who left care did so to be reunited with their families, including 52% who were reunited with parents (or other caretaker from whom they had been removed) and 8% who left care to live with another relative.<sup>43</sup>

### 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
  - has 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.

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

<sup>39</sup> Section 471(a)(15)(F) of the SSA.

<sup>40</sup> Section 471(a)(15)(C) of the SSA.

<sup>41</sup> See Section 475(5)(C)(i) and Section 422(b)(8)(iii) of the SSA.

<sup>42</sup> See HHS, ACF, ACYF, Children's Bureau, *Child Welfare Outcomes: 2007-2010* (June 2012), p. 28.

<sup>43</sup> HHS, ACF, ACYF, Children's Bureau, *The AFCARS Report*, No. 19, preliminary estimates for FY2011 as of July 2012.

rights or responsibilities to a child—is a prerequisite to adoption.<sup>44</sup> Unless certain 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.<sup>45</sup>

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.<sup>46</sup>
- 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).<sup>47</sup>
- 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 (i.e., a request for an assessment of the safety and suitability of a home where a child is to be placed) within 60 days of its receipt from another Title IV-E agency.<sup>48</sup>
- 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.<sup>49</sup>

As an alternative placement for children who can not 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 1, 2012, 30

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<sup>44</sup> “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 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.

<sup>45</sup> Child Welfare Information Gateway, “Grounds for Involuntary Termination of Parental Rights,” State Statutes Series (February 2010).

<sup>46</sup> Section 471(a)(18) of the SSA.

<sup>47</sup> Section 471(a)(23) of the SSA.

<sup>48</sup> Section 471(a)(25) and (26) of the SSA.

<sup>49</sup> 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 Christine Scott.

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.)<sup>50</sup> 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 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.<sup>51</sup> 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.<sup>52</sup>

### 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.<sup>53</sup> Some information available

#### 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.

<sup>50</sup> For additional information see discussion of Kinship Guardianship Assistance in 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 Emilie Stoltzfus.

<sup>51</sup> See CRS Report R42378, *Child Welfare: Health Care Needs of Children in Foster Care and Related Federal Issues*, by Evelyne P. Baumrucker 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.)

<sup>52</sup> 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 Evelyne P. Baumrucker et al.

<sup>53</sup> 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).

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.<sup>54</sup> Federal privacy laws related to sharing medical and educational information might affect the ability of caseworkers to collect information needed for the education and health record for children in foster care. While these laws do not appear to be an absolute barrier to sharing information, ensuring that information may consistently be made available to the child welfare agency in a manner consistent with those laws requires planning, cross-agency communication and cooperation, and/or clarifying state laws and regulations. Courts may also facilitate sharing of necessary medical or education information through court orders.<sup>55</sup>

## 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.<sup>56</sup> 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 in foster care. In August 2011, the federal agencies sent a joint letter to chief state school officers and state child welfare directors to ensure their awareness of the new education stability requirements, and in November 2011, they co-hosted a foster care and education summit that brought together

### 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.

<sup>54</sup> 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 Medicare and Medicaid Services, from Brian Ritchie, Acting Deputy Inspector General for Evaluation and Inspections, July 2005 (OEI-07-00-00645).

<sup>55</sup> Kathleen McNaught, *Mythbusting: Breaking Down Confidentiality and Decision-Making Barriers to Meeting the Education Needs of Children in Foster Care*, ABA Center on Children and the Law (with support from Casey Family Programs), 2005; 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>.

<sup>56</sup> 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.

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.

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.<sup>57</sup> Among 46 states that responded to a recent survey, 33 reported that the child welfare 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). Most, but not all of those states, reported that the agency sought Title IV-E reimbursement for these transportation costs. Among the 28 states that did so, 18 made the claims exclusively as a foster care maintenance payment claim, five states made the claims as either administrative or foster care maintenance costs, and five states made the claims exclusively as an administrative cost.<sup>58</sup> 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.

While 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.<sup>59</sup> 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).<sup>60</sup> 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 with the [child welfare] agency, delays in transferring Individual Educational Plans and credits, and delays in enrollment" (identified in 24 states).<sup>61</sup>

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<sup>57</sup> 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.

<sup>58</sup> Kerry DeVooght, et al., *Federal, State and Local Spending to Address Child Abuse and Neglect in SFYs 2008 and 2010*, Child Trends, with support from Casey Family Programs and the Annie E. Casey Foundation, June 2012, p.19.

<sup>59</sup> The requirement related to considering proximity of education setting at placement was included in amendments made in 1989 (Omnibus Budget Reconciliation Act of 1989, P.L. 101-239). The appropriateness and education stability provisions were added by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). The 2008 provisions were amended in 2011 (by the Child and Family Services Improvement and Innovation Act, P.L. 112-34) to require that they be applied not only at an initial placement in foster care, but also any time a child who is already in foster care is moved.

<sup>60</sup> 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.

<sup>61</sup> *Ibid.*, pp. 32-33.

## Help Youth Make a Successful Transition From Foster Care to Independent 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 “emancipated” from care. These youth have less positive education, employment, and other life outcomes than youth generally.<sup>62</sup> While Title IV-E plan requirements are generally applicable to all children in foster care, some Title IV-E requirements are linked to the child’s age—typically age 16 or older—and seek to address concerns about youth leaving care without a permanent home. The requirements address planning for services necessary to accomplish a transition from foster care (beginning at age 16) and include both agency case planning and court oversight; providing youth with their health and education record when they leave care without placement in a permanent home; and ensuring they have an accurate credit history. The law requires that the youth be helped to develop a transition plan with specific options related to housing, health insurance, employment, education, and other issues. This plan must be developed within the 90-day period before a youth leaves care due to age.<sup>63</sup> Finally, state child welfare agencies must also ensure that the court consults with a youth regarding any transition from foster care to independent living and the plan for that transition. (See text box Title IV-E Plan Requirements Specific to Youth.)

### Title IV-E Plan Requirements Specific to Youth

For a youth in care at age 16 or older—

- include in the youth’s case plan a written description of the services and programs to help him/her transition to independent living;
- 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; and
- 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;
- within the 90-day period before this exit from care, an agency caseworker (and any other appropriate representatives of the youth) must 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, continuing support services, and 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) of the Social Security Act.

This set of requirements specific to older youth in foster care was added to the Title IV-E program in six separate laws spanning more than a quarter of a century (1985-2011). One of the most recent, requiring development of a “transition plan” was added in 2008 by the Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351). The earliest—requiring states, as appropriate, to include in the case plan of a youth age 16 or older a written description of programs and services to help the youth prepare for the transition from foster care—was added

<sup>62</sup> CRS Report RL34499, *Youth Transitioning from Foster Care: Background and Federal Programs*, by Adrienne L. Fernandes-Alcantara.

<sup>63</sup> *Ibid.* As part of the transition plan youth must be provided information regarding health care power of attorney. For more information see CRS Report R42378, *Child Welfare: Health Care Needs of Children in Foster Care and Related Federal Issues*, by Evelyne P. Baumrucker et al.

in 1985 (P.L. 99-272).<sup>64</sup> Court oversight of that services description was added to the law just a few years later in 1988 (P.L. 100-647).<sup>65</sup> In guidance on implementing the 2008 transition plan requirement, HHS calls attention to the prior law transition planning requirements and encourages state agencies “to use these and any other available opportunities to help youth plan for their future and to use the transition plan to build on these earlier planning efforts.”<sup>66</sup>

A Title IV-E agency must have procedural safeguards to ensure that the court or court-appointed body that is conducting a permanency hearing consults with the child in an “age-appropriate” manner regarding the proposed permanency plan or any transition plan for a child in foster care.<sup>67</sup> (This requirement applies to any child in foster care but its reference to “transition plan” gives it special significance for older youth.)<sup>68</sup> In guidance, HHS notes that a state child welfare agency’s procedure to enable court consultation with a child does not necessarily mean that the child must always be in the court to answer questions from a judge. However, it does mean that the Title IV-E agency must be prepared to present the child’s view to the court in some way (e.g., in a written document presented to the court prior to the hearing or in a verbal presentation to the court by an attorney, caseworker, or guardian *ad litem*). The guidance specifically notes that the Title IV-E agency does not meet this requirement by simply presenting to the court what it believes to be in the best interests of the youth. Further, HHS notes that if the court is not satisfied that it has heard the youth’s view regarding the permanency or transition plan, the court may request the youth’s presence at any permanency or transition hearing or make other arrangements to obtain those views.<sup>69</sup>

States are also required (beginning with FY2007) to provide any youth leaving foster care due to age (rather than placement in a permanent family) with a free copy of his or her health and education record if they are leaving foster care due to age rather than placement with a permanent family.<sup>70</sup> States are also required to provide a credit report, annually, to each youth in care who is age 16 or older.<sup>71</sup> This requirement is not limited to youth who are expected to age out of care and is intended to help identify and correct any errors in the report that result from identity fraud. 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).<sup>72,73</sup>

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<sup>64</sup> Consolidated Budget Reconciliation Act of 1985 (COBRA, P.L. 99-272). The 1985 law first established funding for independent living services under the Title IV-E program. Funding for that purpose is now provided in Title IV-E under the Chafee Foster Care Independence Program (established P.L. 106-169). For more information on that program see CRS Report RL34499, *Youth Transitioning from Foster Care: Background and Federal Programs*, by Adrienne L. Fernandes-Alcantara.

<sup>65</sup> Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647).

<sup>66</sup> HHS, ACF,ACYF, Children’s Bureau—PI- 10-11, “Guidance on Implementing the Fostering Connections to Success and Increasing Adoptions Act,” issued July 9, 2010, pp. 13-14. The 2008 transition plan requirement was amended in 2010 by the Patient Protection and Affordable Care Act (P.L. 111-148) to require states to provide information to youth regarding health care power of attorney.

<sup>67</sup> Section 475(5)(C)(iii) as required under 45 C.F.R. 1356.21(f).

<sup>68</sup> The requirement was added to the law in 2006 by the Child and Family Services Improvement Act (P.L. 109-288).

<sup>69</sup> *Child Welfare Policy Manual*, Section 8.3C.2c Q&A 4.

<sup>70</sup> The Safe and Timely Interstate Placement Act of 2006 (P.L. 109-239).

<sup>71</sup> The Child and Family Services Improvement and Innovation Act of 2011 (P.L. 112-34).

<sup>72</sup> The Fair Credit Reporting Act requires national credit reporting agencies, which are private agencies, to provide one (continued...)

## 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.<sup>74</sup> 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.

### 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

#### 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.

(...continued)

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.

<sup>73</sup> 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 18<sup>th</sup> 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>.

<sup>74</sup> 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.

Title IV-B, Subpart 1 of Social Security Act.<sup>75</sup> 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.<sup>76</sup> 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;<sup>77</sup>
- Establish specific goals for each fiscal year regarding the maximum number of children who at anytime in the year will have been in care 25 months or more and describe steps taken to achieve that goal.<sup>78</sup>
- 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.<sup>79</sup>
- Protect the confidentiality of child welfare records by limiting their disclosure as specified in the law.<sup>80</sup>
- Periodically review foster care maintenance payment rates to determine their continued appropriateness.<sup>81</sup>
- 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.<sup>82</sup>
- Allow a fair hearing (before the Title IV-E agency) to any individual whose benefit claim is denied or not acted on promptly.<sup>83</sup>

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<sup>75</sup> Section 471(a)(2) of the SSA.

<sup>76</sup> *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.

<sup>77</sup> 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.

<sup>78</sup> Section 471(a)(14) of the SSA.

<sup>79</sup> Section 471(a)(9) of the SSA.

<sup>80</sup> Section 471(a)(8) of the SSA.

<sup>81</sup> Section 471(a)(11) of the SSA.

<sup>82</sup> Section 471(a)(32) of the SSA.

<sup>83</sup> Section 471(a)(12) of the SSA.

- 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).<sup>84</sup>
- Verify the citizenship or immigration status of any child in foster care.<sup>85</sup>

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.<sup>86</sup> 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.<sup>87</sup>

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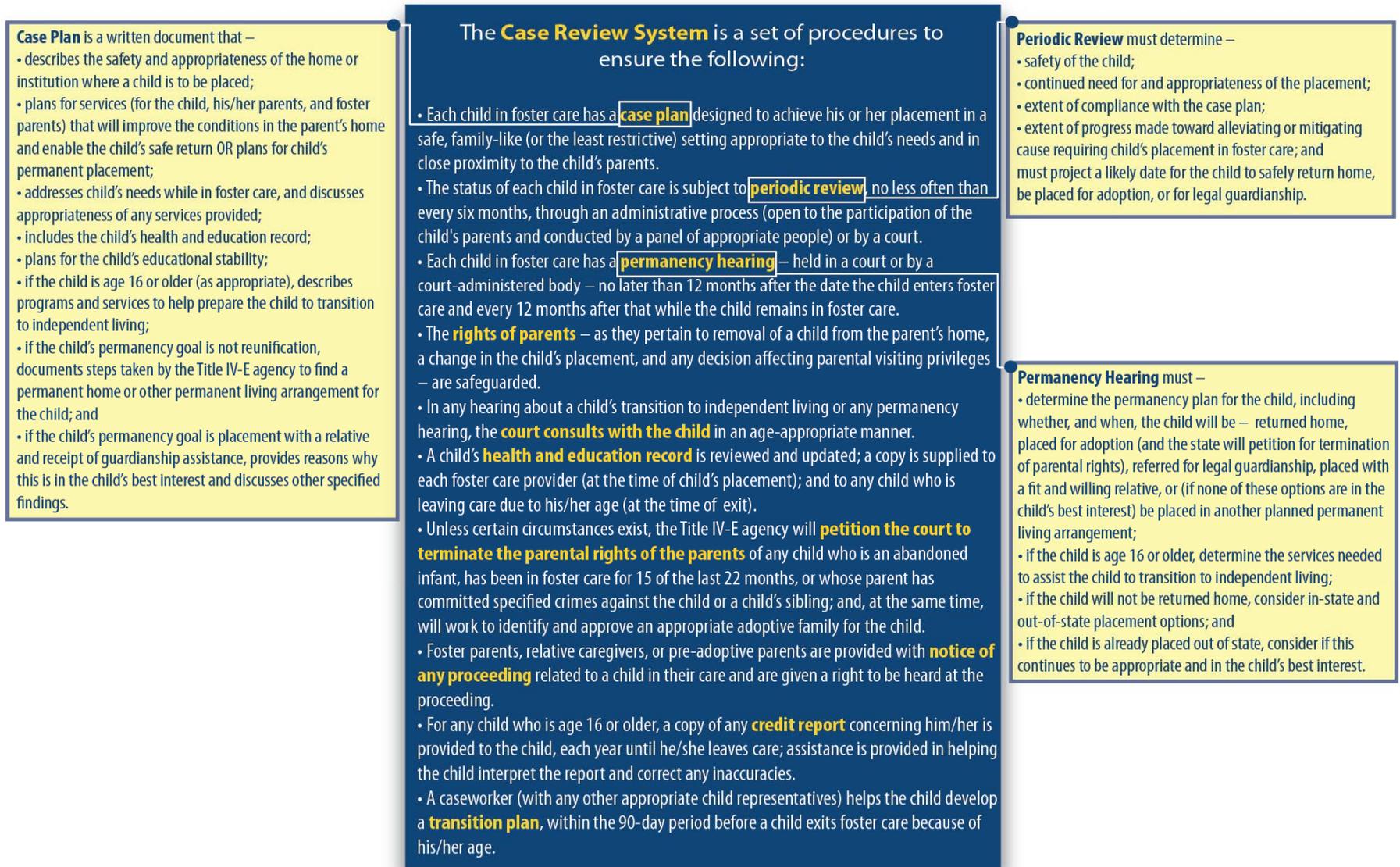
<sup>84</sup> Section 471(a)(17) of the SSA. As provided under the Child Support Enforcement program, the Title IV-E agency must send to the federal government a portion of any child support payment received on behalf of a child who is receiving a Title IV-E foster care maintenance payment and may retain the balance of that payment to reimburse its own spending on the child's behalf.

<sup>85</sup> Section 471(a)(27) of the SSA.

<sup>86</sup> Section 471(a)(4) and (5) of the SSA.

<sup>87</sup> Section 471(6)(7) and (13) of the SSA.

**Figure 1. Child Protections Offered a Part of the Case Review System**



**Source:** Figure prepared by the Congressional Research Service based on definitions included in Sections 475(1) and (5) of the Social Security Act.