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## TITLE IV-E FOSTER CARE

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## TITLE IV-E FOSTER CARE

### 1.1 Introduction

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#### 1.1.1 Purpose of Title IV-E

This manual addresses *Title IV part E of the Social Security Act (Title IV-E) (42 U.S.C. 670 et seq.)* to establish eligibility requirements as provided by Federal regulations (45 CFR Parts 1355 and 1356) and State statutes (Title [63.2](#) and Title [16.1](#)), as well as the appropriate use of Title IV-E funds for those foster care children who have been found eligible for funding under Title IV-E. This manual is a companion to the Foster Care Manual. The Title IV-E manual provides guidance and authority specific for use of Title IV-E funds but additional guidance may also be documented in the Foster Care *manual*.

#### 1.1.2 Overview

Foster Care is a State-mandated service provided through federal, state, and local funds for children who have been placed in family foster homes or other types of out-of-home placements as initiated by a court order, or a Voluntary Placement Agreement, e.g., entrustments and non-custodial foster care agreements. Foster care placement is intended to be a temporary, rather than a long-term solution to family problems. A placement may be with a foster family, an adoptive family, in a group living arrangement, in a residential treatment facility, or in an independent living arrangement.

"Foster care services" refers to the provision of a full range of casework, treatment, and community services for a planned period of time to a child who is abused or neglected as defined in [§ 63.2-100](#) or in need of services as defined in [§ 16.1-228](#) and his family when a child:

- Has been identified as needing services to prevent or eliminate the need for foster care placement.

- Has been placed through an agreement between the local board and the parent(s) or guardians where legal custody remains with the parent(s) or guardians.
- Has been committed or entrusted to a local board or licensed child-placing agency (LCPA) (§ 63.2-905).

Federal Financial Participation (FFP) in the form of reimbursement to states for allowable foster care costs is provided under Part E of Title IV of the Social Security Act.

## 1.2 Title IV-E

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### 1.2.1 Definitions

The following words and terms *are unique to Title IV-E*, when used in this manual, shall have the following meaning, unless the context clearly indicates otherwise. *If additional definitions are needed please refer to Section 1.2 of Chapter E of the VDSS Child and Family Services Manual.*

<u><b>Term</b></u>	<u><b>Definition</b></u>
<b>Agency-Approved Foster Home</b>	Any LDSS-approved provider home that gives 24-hour substitute family care, room and board, and services for children or youth.
<b>Aid for Families with Dependent Children (AFDC)</b>	The benefit program prior to Temporary Assistance for Needy Families (TANF). AFDC was repealed but the AFDC Program requirements that were in effect in Virginia on July 16, 1996, remain in effect for the Title IV-E eligibility determinations.
<b>AFDC Determination Month</b>	<i>The AFDC determination month is the month that the petition is filed by the agency or the physical removal: whichever occurs earliest. If the removal and petition are completed in the same month, the AFDC determination month is the same as the Eligibility month.</i>
<b>Allowable Costs</b>	The expenses identified as reimbursable in Federal guidance.
<b>Annual Judicial Review (AJR)</b>	Court hearing and signed order held within a 12-month period that evaluates and approves the permanency plan for a foster care child.

<b>Assistance Unit</b>	The grouping of persons who were residing in the removal home in the month of removal prior to the child's actual (physical or constructive) removal from the home whose income and resources shall be considered during the eligibility month when evaluating AFDC eligibility.
<b>Benefit Programs Specialist</b>	<i>The worker primarily responsible for determination and ongoing evaluation of documentation for Title IV-E requirements for a foster care case.</i>
<b>Best Available Evidence</b>	The allowable use of documentation that, based upon a preponderance of evidence, can be reasonably viewed to satisfy certain Title IV-E eligibility requirements.
<b>Certificate of Approval</b>	The document provided to a foster home as proof of meeting standards for approval.
<b>Child Care</b>	<i>Care that provides daily supervision during a foster parent's working hours when the child is not in school, and facilitates the foster parent's attendance at activities which are beyond the scope of "ordinary parental duties".</i>
<b>Child-Placing Agency (CPA)</b>	Any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to <a href="#">§ 63.2-1819</a> of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to <a href="#">§§ 63.2-900</a> , <a href="#">63.2-903</a> , and <a href="#">63.2-1221</a> of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.
<b>Comprehensive Services for At-Risk Youth and Families (CSA)</b>	The legislation that created a collaborative system of services and funding that is child-centered, family-focused, and community-based to address the strengths and needs of troubled and at-risk youth and their families ( <a href="#">§ 2.2-5200</a> et. seq.).
<b>Contrary to the Welfare</b>	A determination made by a judicial order with language to the effect that continuation in the home would be contrary to the child's welfare, or that placement is in the child's best interest.

<b>Court Order</b>	Any order issued by a court that removes custody, approves custody, or approves placements and conditions for foster care. This includes Petition for Removal, Emergency Removal orders, Preliminary Removal orders, Annual Judicial reviews and CHINS petitions. Nunc Pro Tunc (now for then) orders or affidavits attesting that the judicial determination occurred at a previous hearing court orders that change the substance of a prior judicial determination or constitute a judicial determination not previously made are not acceptable documentation in support of a judicial determination. Nunc Pro Tunc orders are acceptable for verifying administrative oversights.
<b>Date Child Entered Foster Care</b>	The earlier date of a judicial finding of abuse or neglect or 60 days from the date the child is physically removed from the home.
<b>Deeming</b>	The procedure to evaluate income of an individual living in the removal home who is not included in the AFDC assistance unit but whose income may be considered available to the AFDC assistance unit.
<b>Deprivation</b>	Verification that the child does not have parental support or care due to the death, absence, or physical or mental incapacity of one parent, unemployment or <i>underemployment</i> (when both parents <i>reside in the home</i> ). The initial determination of deprivation is based on the conditions in the specified relative's home during the month the Voluntary Placement Agreement (VPA) is signed or the removal petition is filed.
<b>Eligibility Month</b>	<i>The eligibility month is the month a petition was filed or court proceedings were initiated to remove the child or the month a VPA is signed by the last party whose signature is required. If the removal and petition, court proceedings, or VPA are not completed in the same month, the Eligibility month may be different than the AFDC determination month.</i>
<b>Episode of Foster Care</b>	<i>The period of time beginning with the date the agency receives custody of a child through a court order or VPA and ends the date the court releases agency responsibility.</i>
<b>Family Services Specialist</b>	<i>The worker primarily responsible for case management or service coordination and meeting the foster care requirements for a foster care case.</i>

<b>Good Cause</b>	An exception to the requirement that LDSS cooperate with DCSE to pursue child support on behalf of a foster care child.
<b>Income</b>	The funds earned by members of the assistance unit from wages, salaries, commissions, or profit through self-employment or unearned income received for which no service is performed such as child support, disability/retirement payments, Social Security, or Veterans' benefits.
<b>Legal Custody</b>	<p>The legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and <i>re-determine</i> where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in <a href="#">§ 20-107.2</a>. A court order that gives responsibility for the child's daily care and supervision to relatives or other interested individuals whom the court has determined is:</p> <ul style="list-style-type: none"><li>• Willing and qualified to receive and care for the child.</li><li>• Willing to have a positive and continuous relationship with the child.</li><li>• Committed to providing a permanent suitable home for the child.</li><li>• Willing and able to protect the child from abuse and neglect (<a href="#">§§ 16.1-278.2</a> and <a href="#">16.1-288</a>).</li></ul>
<b>Licensed Child-Placing Agency (LCPA)</b>	Any CPA who is licensed and places children in foster homes, adoptive homes or independent living arrangements pursuant to <a href="#">§ 63.2-1819</a> of the Code of Virginia.

<b>Notice of Action (NOA)</b>	<i>A form completed to communicate to the Family Services Specialist, Fiscal Staff, and CSA Coordinator, the outcome of the Title IV-E evaluation.</i>
<b>Personal Incidentals</b>	<i>These items are typically allowable costs using maintenance funds to purchase for the child on an occasional, as-needed basis and may include a variety of items. Specifically, we consider the following categories of expenditures examples of “personal incidentals”: items related to personal hygiene; cosmetics; over-the-counter medications and special dietary foods; infant and toddler supplies, including high chairs and diapers; fees related to activities, graduation fees; and miscellaneous items such as stamps, envelopes, writing paper, etc. Personal incidentals are solely funded using Budget Line 811.</i>
<b>Physical Custody</b>	The physical care and supervision of a child ( <a href="#">§ 20-146.1</a> ).
<b>Reasonable Efforts</b>	A determination made by a court order that the agency has made efforts to keep the child in the home, return the child to the home or to achieve another permanent placement.
<b>Relatives of Fifth Degree</b>	Any relative by blood, marriage, or adoption that is within five (5) generations of child which goes back to: <ul style="list-style-type: none"><li>• 5<sup>th</sup> degree-Great-great-great grandparent; Great-great aunt/uncle; Great-great niece / nephew; First cousin once removed (child of first cousin).</li><li>• 4<sup>th</sup> degree-Great-great grandparent; Great aunt/uncle; Great niece / nephew; First cousin.</li><li>• 3<sup>rd</sup> degree-Great grandparent; Aunt / Uncle; Niece / nephew.</li><li>• 2<sup>nd</sup> degree-Grandparent; Sibling.</li><li>• 1<sup>st</sup> degree-Parent.</li></ul>
<b>Removal Home</b>	The home of the individual from whom legal custody is being removed. Typically this is the parent unless there has been a legal transfer of custody to someone else.
<b>Residential Placement</b>	A placement in a licensed publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their families. A residential placement includes children's residential facilities as defined in <a href="#">§ 63.2-100</a> of the Code of Virginia.

<b>Resources</b>	Real and personal property with countable value owned by the members of the assistance unit.
<b>Sibling</b>	Two or more children with at least one natural or adoptive parent in common.
<b>Specified Relative</b>	The person related to the child by blood, adoption, or marriage with legal custody at time of removal.
<b>System Inquiries</b>	<i>Automated resources used to substantiate eligibility. Databases that may be accessed include ADAPT (Application Benefit Delivery Automation Project), APECS (Automated Program to Enforce Child Support), SVES (State Verification Exchange System), DMV (Department of Motor Vehicles), SPIDeR (Systems Partnering in a Demographic Repository), MMIS (Medicaid Management Information System) and VEC (Virginia Employment Commission) wage records.</i>
<b>Voluntary Placement Agreement (VPA)</b>	An agreement entered into by the parent(s) or legal guardian which leads to a physical or constructive removal of the child from the home. VPAs include Permanent and/or temporary entrustments and Non-custodial foster care agreements.

## 1.2.2 Legal basis – federal

### 1.2.2.1 Federal adoption assistance

In 1980, the [Federal Adoption Assistance and Child Welfare Act](#) (Public Law 96-272) created new sources of funding under Title IV-E of the Social Security Act for the placement of children from needy families. Title IV-E requirements included certain protections for children: reasonable efforts to prevent unnecessary removal of the child from his home; returning the child to his home as soon as conditions in the home permit; and facilitating the adoption or other permanent placement for children who cannot be returned to their own homes.

Additionally, the Adoption Assistance and Child Welfare Act established the Federal Title IV-E adoption assistance program which provides matching funds to States operating a program of subsidies for parent(s) who adopt children with special needs who were either eligible for Aid for Families with Dependent Children (AFDC) or Supplemental Security Income (SSI).

### 1.2.2.2 Personal Responsibility and Work Opportunity Reconciliation Act

In 1996, the [Personal Responsibility and Work Opportunity Reconciliation Act](#) (Public Law 104-193) created the Temporary Assistance for Needy Families

(TANF) block grant to replace the AFDC Program. Although AFDC was repealed, the AFDC Program requirements that were in effect in Virginia on July 16, 1996, remain in effect for Title IV-E eligibility determinations for all children in foster care and for certain children being adopted. If a child is receiving TANF assistance, this does not mean that the child is eligible for Title IV-E assistance. The Title IV-E eligibility decisions shall be based on the AFDC requirements as set forth in this manual.

### **1.2.2.3 Fostering Connections to Success and Increasing Adoptions Act of 2008**

[Fostering Connections Act](#) refers to Public Law 110-351 enacted on October 7, 2008. Generally, the law amends the Social Security Act to extend and expand adoption incentives through FY2013; create an option to provide kinship guardianship assistance payments; create an option to extend eligibility for Title IV-E foster care, adoption assistance and kinship guardianship payments to age 21; de-link adoption assistance from Aid to Families with Dependent Children (AFDC) eligibility; and provide federally-recognized Indian Tribes or consortia with the option to operate a Title IV-E program, among many other provisions.

### **1.2.2.4 Code of Federal Regulations**

Federal regulations (Title 45 Public Welfare) specify the requirements applicable to Title IV-E foster care.

## **1.2.3 Legal basis – state**

[Title 63.2](#) of the Code of Virginia effective October 1, 2002 mandates an LDSS in every political subdivision of the state, or combination thereof, and specifies the duties and responsibilities of the local board of social services and director, as well as the methods of discharging these responsibilities. This Title defines the general and specific duties and responsibilities of the VDSS in relation to the supervision of LDSS. Only LDSS employees are authorized to make the determination of Title IV-E eligibility.

Title 16.1 [Chapter 11](#), of the Code of Virginia authorizes the court to cooperate with and make use of the services of all public or private societies or organizations which seek to protect or aid children or families, in order that the court may be assisted in giving the children and families within its jurisdiction such care, protection, and assistance as will best enhance their welfare.

## **1.2.4 Title IV-E federal review**

The [Improper Payments Information Act](#) (IPIA) of 2002 requires Federal agencies to manage and reduce or eliminate, where possible, improper payments in Federal

programs. Periodic Title IV-E foster care eligibility reviews are conducted to validate the accuracy of a State's claim for reimbursement of payments made on behalf of eligible children placed in allowable homes or facilities. The validations are made most effectively by an examination of the case records of the child and provider and payment documentation. Payment eligibility also is monitored and reviewed by audits conducted by the Office of the Inspector General (OIG) and the Administration for Children and Families (ACF) Regional Office when conducting a claims review. In conducting foster care eligibility reviews, ACF is fulfilling its financial and programmatic stewardship responsibilities, while also complying with statutory provisions mandated in the IPIA of 2002.

The amount of funds to be disallowed will be determined by the extent to which the State – by virtue of the LDSS – complies with Title IV-E eligibility provisions. Due to the potentially significant dollar amount, LDSS may be held responsible for any financial disallowance associated with cases determined not to be in Title IV-E compliance.

In addition to the periodic Federal reviews, the State will also conduct onsite case reviews at all LDSS agencies to ensure compliance with Federal Regulation. The State review will evaluate accuracy of compliance with state guidance, completion of staff training requirements, correctness of OASIS reports for court hearing and placements, file structure and organization, and the accuracy of payments using Title IV-E funds. The Virginia Appropriations Act provides authority for the state to seek repayment of funds identified through the State review process or Federal reviews that were made in error by the LDSS if the LDSS has not utilized or applied required procedures for full compliance with Federal regulations.

### **1.2.5 Standard file format**

The eligibility case file should be a “stand alone” file which incorporates any and all documents required for determining eligibility. The standardized format will minimize errors, speed reviewing time, improve error detection, and provide an adequate audit trail. The *Benefit Programs Specialist* should organize the cases in the following sections with divider pages identifying each section.

#### **Section I – Permanent Verification**

- Birth Certificate for child.
- If legal custody is held by someone other than parent at removal:
  - Custody Order or signed statement from SW or individual who had legal custody attesting to legal custody at removal.
- Social Security Number for foster care child.

- DCSE Referral/501 form on both absent parents (not required on deceased parent).
  - Good Cause Claim form (if applicable).
- Any other form/document which would be considered a permanent document.
- Adoption Assistance Screening Tool (if applicable).

### **Section II – Initial Court Orders or VPA**

- Removal Petition (if applicable).
- Court Order which transferred legal custody to agency (i.e., ERO, PRO, Transfer of Custody Order and associated affidavits).
- Court Order which adjudicated abuse/neglect (if applicable).
  - PRO or Adjudication Order.
- VPA (if applicable) which includes Permanent Entrustments, Temporary Entrustments, and Non-custodial Agreements.

### **Section III – Initial Screening**

- Initial Application.
- Initial Evaluation of Eligibility.
- Supporting Documentation used to establish initial eligibility. (*i.e. System Inquiries*)
- Notice of Action with approval date.

### **Section IV – Changes** forms or agency notification forms used to notify workers

**Section V – Placements** (chronological order with the most recent on top). Documentation required for each type of placement is listed below.

#### Agency Approved Family Foster Home

- Financial Agreement for LDSS Approved Providers (032-02-0052-03-eng.).
- Checklist Form (032-04-0054-01) with Documentation of *results of National Fingerprint Criminal Record Check, Virginia State Police Check (if applicable), Central Registry Check, and Sworn Disclosure Statement*, requested and

received (dates shall be prior to child's placement in home *if agency is utilizing Title IV-E funds*).

- Foster Home Certificate of Approval.

#### Licensed Child Placing Agency Family Foster Home

- Financial contract/agreement.
- LCPA license (license shall be current).
- Foster Home Certificate of Approval.
- State *Form (032-02-0507-00)* letter substantiating results of *National Fingerprint Criminal Record Check, Virginia State Police Check (if applicable), Central Registry Check, and Sworn Disclosure Statement, requested and received* (dates shall be prior to child's placement in home *if agency is utilizing Title IV-E funds*).

#### Residential Facility/Group Home

- Financial contract/agreement.
- Facility/Group Home license (license shall be current).

**Section VI – Annual Judicial Reviews & Related Court Orders** – all court documents including but not limited to:

- *Associated Affidavits and Petitions*
- Emergency Removal Order.
- Preliminary Removal Order.
- Dispositional Order.
- Foster Care Review Order.
- Permanency Planning Orders.
- Termination of Parental Rights Orders.
- Permanent Foster Care Orders.

#### **Section VII – Payment Information**

- Case Actions.

- Clothing Allowance Tracking.
- Any documentation regarding payment status of case.
- VEMAT page with approved payment.

### Section VIII – Miscellaneous

- VACIS printouts.
- Medicaid documents.

### Section IX – Prior Episodes of Foster Care Documents

#### 1.2.6 OASIS access and verification

All Title IV-E workers *will* be granted access to OASIS by the LDSS Director/LDSS Security Officer. The agency may decide if this is read-only access or full use. The *Benefit Programs Specialist* should review his or her cases in OASIS quarterly to verify that the court hearings, placement, and payment category information is correct. The *Benefit Programs Specialist* should notify the *Family Services Specialist* and/or finance of any errors or discrepancies on the areas reviewed. Any reported errors that are unresolved longer than **two (2) weeks** should be referred to the *Benefit Program Supervisor* for review and resolution.

#### 1.2.7 Payment accuracy

Title IV-E funds are to only be used for allowable costs as defined by the Social Security Act for children who meet Title IV-E requirements. Included in the allowable maintenance costs are payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision/*child care*, school supplies, a child's personal incidentals (*see definitions*), and reasonable travel for the child to visit with family or other caretakers and to remain in the *same* school *he or she was attending prior to placement in foster care*.

Unallowable costs include any type of services payments under any circumstances, and regardless of who provides the service. Examples of services are:

- Counseling and therapy to help with a child's adjustment at the institution.
- Counseling and therapy to help a child resolve the problem(s) for which he or she was placed.
- Counseling and therapy with the child and his or her biological family to resolve the difficulties that led to the need for placement.
- Counseling and therapy to plan for the return of the child to the community.

- Psychological or educational testing.
- Evaluation and assessment.
- Mentoring or in-home services.
- Medical cost including doctor visits and prescriptions.
- Respite care or education services.
- Physical or occupational therapy.

The *Benefit Programs Specialist* is responsible for determining eligibility for Title IV-E foster care and recommending accurate payments. Maintenance payments shall be verified to the amounts provided in the financial agreements and the VEMAT. The *Benefit Programs Specialist* is also responsible for monitoring the amount paid annually for supplemental clothing and to ensure that it does not exceed the limits established by the State. All supplemental clothing allocations shall be verified through documentation provided by the *Family Services Specialist* that the funds were used to purchase clothing for the designated child. This may include a purchase order to the store and receipt or a receipt from store(s) where the foster parents purchased the items. The decision as to the appropriateness and reasonableness of the items purchased is the responsibility of the *Family Services Specialist*. Section 17.3 of the Foster Care *Manual* provides additional guidance for clothing purchases.

Documentation for state and federal reviews requires a complete payment history including invoice numbers, child and provider identification, date paid, and period covered, type of payment/activity, and funding source. Invoices with ambiguous definitions or lump sum payment request shall be clearly identified as applicable to an allowable Title IV-E cost. Although this type of information is generally processed and maintained in the LDSS business office, each locality should ensure that benefit, service, and finance staff are aware of the financial requirements.

#### **1.2.7.1 Funding – categories of Title IV-E foster care costs**

Title IV-E provides states Federal Financial Participation (FFP) for the costs of children placed in foster homes or other types of foster care under a court order or Voluntary Placement Agreement (VPA) (entrustment or non-custodial foster care). Title IV-E is an individual entitlement for qualified children who have been removed from their homes. For children who meet Title IV-E eligibility requirements, the federal government shares in the cost of:

- **Maintenance.** Maintenance costs are for payments associated with maintaining the child who has been removed from his/her home. For Title IV-E eligible children, the federal share of maintenance costs is

based on the state Medicaid matching rate. States may claim FFP from the first day of placement in the month in which all Title IV-E eligibility criteria are met. If the full monthly payment is not due, prorating room and board for part of a month is based upon the actual number of days of care provided and the number of days in the month. Payments begin on the date a child is placed in the home and end as of the date prior to the removal date. See *Section 17.1.4 and 17.1.5 of the Foster Care Manual for General guidance regarding maintenance payments.*

- **Sources of funding.** *Maintenance costs should be paid with:*
  - A child's own income (i.e., SSI, SSA, or child support);
  - Title IV-E funds for eligible children;
  - State pool funds for Non-Title IV-E children; or,
  - Local only funds when the locality is not in compliance with guidance.

### 1.2.8 Confidentiality

Client information given to the agency will be kept confidential and will only be used as needed in the administration of Title IV-E and other related public assistance programs and services. The Code of Federal Regulations (45 CFR 205.50), and Virginia Code §§ [63.2-102](#) and [63.2-104](#) and § [2.2-3800](#) et seq., and Virginia Administrative Code [22 VAC 40-910-100](#), govern the confidential treatment of case information.

## 1.3 Entering foster care – Title IV-E removal requirements

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The child shall meet the Title IV-E removal requirements to be Title IV-E eligible. Entry into foster care begins with a removal and transfer of custody or a voluntary placement by the legal custodians with the LDSS. Custody is a broad term which may include physical custody or legal custody. If legal custody is held by someone other than a parent, a copy of the court order granting the individual legal custody should be obtained and placed in the eligibility file. If no order is available, a written statement from the *Family Services Specialist* or individual is acceptable as best available evidence of legal custody.

### 1.3.1 Types of removals

#### 1.3.1.1 Court ordered removal

- A judicial order for a physical or constructive removal of the child from a parent or specified relative (see [Section 1.3.1.2](#)).

- Judicial orders used for removal include, but are not limited to:
  - Emergency Removal Order (ERO), (form DC-526)
  - Preliminary Removal Order (PRO), (form DC-528)
  - Order for Custody Transfer to Agency, (form DC -562)
- A judicial determination regarding a child's removal from the home can occur on any District Court Order Form, or locally created court order that meets all federal requirements for Contrary to the Welfare and "Reasonable Efforts" language.
- *All documentation to support the removal order; to include petitions, affidavits, and any other case related documents must be submitted to the Benefit Programs Specialist for determination of eligibility.*

#### **1.3.1.2 Voluntary Placement Agreement (VPA)**

This is an agreement entered into by the parent(s) or legal guardian which leads to a physical or constructive removal of the child from the home.

Voluntary Placement Agreements include:

- Permanent and/or temporary entrustments.
  - Legal and/or physical custody transferred to LDSS.
- Non-custodial foster care agreements.
  - Physical custody transferred to LDSS and legal custody remains with the parent(s) or legal guardian.

Voluntary Placement Agreements do not include CSA Parental Agreements.

- Children with CSA Parental Agreements are not required to adhere to VDSS foster care policy, and as such are not considered to be "in foster care."
- Neither Title IV-E referrals nor Title IV-E funds shall be used for any costs for children under CSA Parental Agreements.

#### **1.3.1.3 Physical removal**

Physical removal occurs when the child is physically taken from his or her current place of residence and placed into a substitute care setting.

**Example 1:** The child was living with a *parent* (who had legal custody) at the time the agency physically removed the child from the *parent's* home pursuant to a court order or VPA and subsequently placed the child in a foster care setting.

**Example 2:** The child ran away from home of parents and was residing in the home of a non-relative when agency was awarded legal custody. The child was physically taken out of the home of the non-relative and placed in a foster care setting.

#### 1.3.1.4 Constructive removal

Constructive removal is considered a “paper removal.” The agency has obtained legal responsibility of the child via a court order or VPA, but the agency does not physically remove the child from his or her current residence. In these situations the LDSS approves the home as a foster family home and the child continues to reside in that home while in foster care. The following conditions should exist for constructive removals:

- Child is left in his or her current residence.
- Legal custodian of child did not reside in the home at the time of the judicial order or VPA.
- Legal custodian meets the definition of a specified relative.
- Child and legal custodian did reside together within six months of the judicial order or VPA.

**Example 1:** The child resides in a three-generation household comprised of the child, his/her *parent* (who has legal custody), and his/her grandparent. Within six months prior to the eligibility month, the child's *parent* leaves the home. The agency places/leaves the child in the grandparent's home subsequent to the court order removing legal custody from the *parent*. The local agency begins a process to approve the grandparent as a foster home.

**Example 2:** On May 1 the parent(s) leave the child at *grandparent's* house for an overnight visit. The parent(s) never return for the child. On June 15, the *grandparent* contacts the LDSS to report that the child has been abandoned. A court hearing is held on June 23 and custody of child is transferred to the LDSS. The agency places/leaves the child with the *grandparent* and the agency begins a process to approve the *grandparent* as a foster home. All constructive removal requirements are met.

**Example 3:** The child resides in a three-generation household comprised of the child, his *parent*, and his grandparent. On February 23 the child's *parent* moves

out of the home to live with *their paramour*. *The parent* leaves the child to remain living with the grandparent. A court order is issued on November 23 transferring legal custody from the *parent* to the LDSS. The agency places/leaves the child with the grandparent. Child is not Title IV-E eligible as the child and legal custodian have not lived together within six months of the judicial order.

**Note:** If an infant is taken directly from the mother after birth and placed into foster care, and the mother is a hospital patient or a prison inmate, the hospital or prison would be considered the removal home, and therefore also meet the "living with a specified relative" criterion.

### 1.3.2 Specified relative

#### 1.3.2.1 Identification/Determination

The specified relative shall be related to the child by blood, adoption, or marriage and shall have legal custody at time of removal.

- Biological parents have legal custody until or unless that legal custody is terminated via court proceedings.
- Other relatives shall be related within the fifth degree of kinship to be considered a specified relative.
- Spouses of the specified relative within the fifth degree in which the marriage is terminated by death or divorce may also be considered a specified relative.

#### 1.3.2.2 Documenting the specified relative

- Biological Parent(s)
  - No additional documentation is needed when the specified relative is the biological parent(s).
- All other relatives within the fifth degree of kinship.
  - A judicial determination will always exist if someone other than the biological parent has legal custody.
  - If available, a copy of the court proceedings awarding legal custody shall be maintained in the eligibility record.
  - If unavailable, a *Family Services Specialist* or relative of the child may make a written, dated statement identifying who has legal custody.

**Note:** When evaluating court proceedings, terms such as “legal guardian” or “legal custodian” are acceptable, as long as the person obtaining legal custody has a clear legal responsibility for the day-to-day care of the child.

### 1.3.3 Removals that do not meet Title IV-E requirements

If the child does not meet Title IV-E removal requirements, the child cannot be Title IV-E eligible during that episode of foster care. The following are situations that do not meet Title IV-E removal requirements:

- Judicial determination was made to remove the child from the home, but the child was not removed either physically or constructively (see [Section 1.3.1.4](#)) within a reasonable amount of time.
- A VPA was executed, but the child remained in the home of the parent or legal guardian who entered into the agreement.
- The child had not lived with a parent or specified relative within six months prior to the initiation of court proceedings, or as of the date of the signed VPA

### 1.3.4 Timeliness of removal

Although there is no defined amount of time from which a child shall be physically or constructively removed upon a court ordered removal or signed VPA, there are guidelines in Sections [1.3.4.1](#) and [1.3.4.2](#) for meeting the Title IV-E criterion of removal that should be used. Additional timelines for removal and court hearing dates are available in the Foster Care Manual, Section 17.3.

#### 1.3.4.1 Timeliness considerations

The following shall be considered when evaluating if the child’s removal from the home was timely:

- The judicial determination that results in the child's removal shall coincide with (i.e., occur at the same time as) the agency's action to physically or constructively remove the child, unless the court order specifies an alternative timeframe for removal.
  - **Example:** A judicial order was issued on August 3 granting the LDSS custody of child. The judge issuing the order adds language to the order which states the child will be provided with temporary in-home service to protect the child and there is no physical risk to child. The child will remain in the home until August 6 at which time the child will be removed and placed into a residential facility.

- If a court makes a judicial determination that it is contrary to the child's welfare to remain at home (or similar language) and the child does, in fact, remain at home and no immediate removal occurs, the requirement for removal is not met and the child is ineligible for Title IV-E during the episode of foster care.
- Since VPAs are entered into on a prearranged, non-emergency basis, the child's removal and subsequent placement are expected to occur immediately.

#### 1.3.4.2 Delayed placements into foster care

There may be situations which prevent the local agency from making an immediate placement into a foster care setting following a court order or VPA. These could include but are not limited to a child being hospitalized, the child is temporarily in detention or the child cannot be located.

These situations should be treated as an unallowable placement and the case record should clearly document why the placement date with a foster care provider does not coincide with the court order or VPA. The Title IV-E case would not be approved for Title IV-E payments until the child is placed.

#### 1.3.4.3 Physical removals prior to a judicial order

The Code of Virginia (§ [63.2-1517](#)) provides authority for a *CPS worker* of an LDSS, physicians, or law-enforcement officials, investigating a report or complaint of abuse and neglect, to take a child into custody for up to 72 hours without prior approval of parents or guardians. If the 72-hour period for holding a child in custody expires on a Saturday, Sunday, or other legal holiday, the 72 hours shall be extended to the next day on which the court is not lawfully closed (*CPS manual*).

- In this situation, typically an emergency removal order (ERO) or preliminary removal order (PRO) is issued **within 72 hours** of the child's physical removal from the home. If no order is issued the child is not in foster care and will be returned to his home.
- A child is considered to be in foster care beginning with the date of the physical removal from the home.
  - **Example:** Child physically removed on 10-2-10 which is a Saturday. The LDSS places the child into a family foster home. The court hearing is held on 10-4-10 which is the date of the signed court order. Title IV-E reimbursement could begin as early as 10-2-10 (the first day of placement) if all Title IV-E eligibility conditions are met in October.

**Note:** Federal policy states “reimbursement may begin from the first day of placement in the month in which all Title IV-E requirements are met.”

## 1.4 Title IV-E application process

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A Title IV-E eligibility determination process begins the moment the LDSS obtains legal custody of the child via court order or an entrustment, or physical custody via a signed non-custodial foster care agreement. The determination process requires proactive communication between local benefit, service, and fiscal staff to gather and share information in the effort to make a timely and accurate Title IV-E eligibility determination.

### 1.4.1 Application referral

All children who enter foster care shall be referred to *Benefit Program Specialist* for an initial evaluation of Title IV-E eligibility and Medicaid **within ten (10) calendar days** of removal from the home. *Family Services Specialist* is responsible for completing the [Title IV-E Foster Care and IV-E Medicaid Application](#) (Form # 032-03-0636-04) and transferring the completed form to the *Benefit Programs Specialist* (Foster Care Manual, Section 4.5.1). The *Family Services Specialist* is responsible for referring and providing information to the *Benefit Programs Specialist* that is used in making the Title IV-E eligibility determination. *If there is no reported income for the household, the Family Services Specialist documents on the form in Section IV how the family is making ends meet.*

#### 1.4.1.1 Application date

*The application date for processing the Title IV-E application is considered to be the date the Benefit Programs Specialist receives the completed Title IV-E application from the Family Services Specialist. The date of application for determining Title IV-E payments is considered to be the date the judge signs the court ordered removal, or the most recent date when all the required signatures on the VPA are obtained.*

#### 1.4.1.2 Application process

The completed Title IV-E Foster Care and Medicaid Application shall be submitted by *Family Services Specialist* to *Benefit Program Specialist* for evaluation along with:

- A copy of the initial court order placing custody with the LDSS, *accompanied with the petition and/or affidavit*, if applicable, or VPA (see [Section 1.3.1.2](#)).
- Any other supporting documentation in reference to the Title IV-E Foster Care and Medicaid Application which may include, but is not limited to:

- Social security number (SSN), or proof of application.
- Birth verification.
- Citizenship or alien status.
- Foster care placement approval/license documentation.
- “501 form” – [Absent Parent/Paternity Information](#) (032-03-0501-06) (see [Section 1.8](#)).

**Note:** If the child enters foster care through a non-custodial foster care agreement, a separate Medicaid application form shall be submitted by the child’s legal guardian (see [Section 1.9](#)).

If new or additional information that will affect the eligibility determination is obtained by the *Family Services Specialist* after the ten-day referral period, the information shall be communicated to the *Benefit Program Specialist* immediately.

#### 1.4.2 Initial evaluation

Upon receiving the “Title IV-E Foster Care and IV-E Medicaid Application”, *Benefit Program Specialist* shall make an initial Title IV-E eligibility determination by completing the [Title IV-E Foster Care and IV-E Medicaid Evaluation](#) (Form # 032-03-0635-05). *Benefit Programs Specialist will be required to complete the evaluation in its entirety and list all reasons for ineligibility on the form.*

##### 1.4.2.1 Evaluation process

The “Title IV-E Foster Care and Medicaid Application”, is evaluated by the *Benefit Programs Specialist* and reviewed to determine if additional information is needed. If additional information is needed, *Family Services Specialist* should be notified **within two (2) business days** to allow sufficient time to obtain the information to meet the 45-*calendar* day processing time frame.

##### 1.4.2.2 Disposition of application

There are three (3) possible determinations related to Title IV-E eligibility that may be made:

- **Eligible.** *A case is considered Eligible if the following conditions are met.*
  - *Established and documented for the month of the VPA or initiation of removal court proceedings that the child is removed, physically or constructively, from the home of a specified relative;*

- *Living with the same specified relative within 6 months of the child's removal;*
- *AFDC-eligible in that home in the month of, and prior to, removal;*
- *Financially needy; and*
- *Deprived of parental support or care.*

Refer to [Section 1.6](#) for ongoing requirements for payment eligibility. Refer to [Section 1.7](#) to determine the entitlement begin date. Title IV-E eligibility will continue for the duration of that foster care episode unless the child loses eligibility as a result of one of the instances provided in [Section 1.10.1](#).

However, if new information is received which indicates incorrect information was used to conduct the initial screening, a new initial screening shall be conducted.

- **Ineligible.** The child did not meet initial Title IV-E eligibility criteria listed above.

Corrections cannot be made to court orders which amend or change contrary to the welfare or reasonable efforts language. Administrative errors (i.e., the wrong year was written on the order) may be corrected with a written statement or "nunc pro tunc" order from the court (see [Section 1.5.3](#)) verifying the correct date upon which the hearing was conducted and that the original date was an administrative oversight.

- **Denial.** This is temporary status due to insufficient *or missing* information being provided for a full determination. *This case would need to have a final resolution for determination of eligibility within 120 days of the child entering care. If additional information is received prior to the 120th day, immediate action to establish the correct eligibility status should be completed. All cases without a final determination by the 120th day should have a Notice of Action (NOA) finding the case as ineligible.*
  - Cases denied in VACIS for this reason (denial code 57) shall be monitored by the Benefit Program Supervisor monthly in order to ensure that workers follows-up until a final determination in the initial Title IV-E eligibility is made.

*The agency may reconstruct the application if 1) if the case was found initially ineligible, 2) the agency conducted the child's AFDC determination on the wrong specified relative or used the wrong AFDC approval month or 3) the agency subsequently receives information that will change the agency's*

*previous determination regarding the child's initial eligibility. If a reconstruction is necessary, the agency should clearly mark on the application and evaluation the word "Reconstruction", and follow the process in Sections 1.4.1 and 1.4.2.*

#### **1.4.2.3 Title IV-E eligibility disposition – Notice of Action (NOA)**

Upon rendering the disposition of Title IV-E eligibility, the [Title IV-E Foster Care Notice of Action](#) (Form # 032-04-0079-02) will be completed and communicated to the *Family Services Specialist*, fiscal staff, and *CSA Coordinator*. This communication will help ensure timely and accurate use of Title IV-E and/or state funds.

All correspondence with the payee regarding the Title IV-E payment shall be done by the *Family Services Specialist*.

#### **1.4.2.4 Title IV-E re-screening of initial eligibility**

If the agency has made a determination on a case and new information is obtained that may affect the decision, re-screening of the initial application is allowed. If the initial determination is changed, the payments may also be corrected and retroactive adjustments not to exceed 8 quarters (including the current quarter) are allowed. The local department should verify the adjustments with VDSS Finance to ensure correct quarterly corrections are made.

Examples of types of information are:

- Father listed on the application is determined to not be the father through Paternity/DNA test results.
- Person listed as a member of the AU are in error such as a step-parent later determined not to be the father of the child.
- If best available evidence of income is what parent reported, and later it was verified as less income, which would make the child eligible.

## **1.5 Initial Title IV-E eligibility screening**

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Initial Title IV-E eligibility evaluation requires compliance with judicial language requirements and Aid to Families with Dependent Children (AFDC) relatedness criteria. If the child fails to meet either of these requirements, the child cannot be Title IV-E eligible at any point during this episode of foster care.

AFDC relatedness criteria, is based on Title IV-A (AFDC), Part A, of the Social Security Act. In all references to AFDC relatedness, the eligibility of the child is based on the AFDC program in effect in Virginia's State Plan on July 16, 1996.

If a child is initially determined Title IV-E eligible, the child continues to be Title IV-E eligible while under the legal responsibility of the agency. If placement and licensing requirements are not met or annual judicial hearings are not completed when due, *all payments are Title IV-E unallowable* until the requirements are met.

### 1.5.1 Judicial language requirements – court-ordered removal

After the LDSS receives legal responsibility, even temporarily, through a court order, the following judicial language criteria shall be evaluated: contrary to the welfare/best interest, and reasonable efforts.

#### 1.5.1.1 Contrary to the Welfare (CTW) / Best Interest (BI)

For a child to be Title IV-E eligible, the initial court order authorizing removal of the child shall include and properly indicate (i.e., a check box) a statement that continuation in the home would be contrary to the welfare of the child or similar language to the same effect. If the initial determination does not satisfy the CTW/BI language requirement, the child cannot be Title IV-E eligible for the duration of that foster care episode.

- The initial court order authorizing removal of the child is usually either the Emergency Removal Order (ERO) or the Preliminary Removal Order (PRO), but can be made on any type of judicial determination that meets all federal requirements.
- The *Family Services Specialist* shall make every effort to ensure that the initial judicial determination authorizing the removal of the child includes the required language.

#### Examples of CTW or BI language:

- “The child would be subjected to an imminent threat to life or health ... if the child were returned to or left in the custody of his or her legal guardian.”
- “Continued placement in the home would be contrary to the welfare of the child.”
- “It is in the best interest of the child to be removed from the parent or legal guardian.”

**Note:** Title IV-E judicial language requirements apply to delinquent youth and children in need of services *or supervision* (CHINS *or CHINSup*) placed in foster care pursuant to a court order. It is permissible to include language referencing community protection, but judicial language that addresses the reasons why remaining in the home is contrary to the individual juvenile’s

welfare must appear. Court orders lacking CTW language shall result in the child being Title IV-E ineligible for the entire foster care episode.

### 1.5.1.2 Reasonable Efforts (RE)

Title IV-E cannot be granted prior to obtaining a judicial determination with acceptable reasonable efforts language. There shall be a court order within 60 days after the child's physical removal that contains a judicial determination that "reasonable efforts to prevent removal" or "reasonable effort to prevent removal were not required" has been made.

**Note:** Typically the RE language requirement is satisfied on the initial order placing the child in the custody of the LDSS.

- If the "reasonable efforts" judicial determination has not been obtained within 60 days from the child's physical removal, the child cannot be Title IV-E eligible for the duration of that foster care episode.
- This requirement does not apply to children brought into foster care pursuant to a VPA (see [Section 1.5.2.2](#)).
- Reasonable efforts to prevent a child's removal from the home is not required if the agency obtains any judicial determination within 60 days from the child's physical removal that:
  - Parental rights have been terminated;
  - The parent(s) have been convicted of certain crimes; or
  - The child has been subjected to certain aggravated circumstances.

#### Examples RE language:

- "Reasonable efforts have been made to prevent removal of the child from his or her home."
- "Reasonable efforts are deemed to have been made to prevent removal of the child from his or her home because there was no reasonable opportunity to provide preventive services."
- "The court finds that the agency made reasonable efforts to maintain the child in his/her own home."
- "Due to the circumstances presented, there was an immediate danger to the child which would not have been mitigated by the provision of preventive services."

## 1.5.2 Judicial requirements – Voluntary Placement Agreements (VPA)

When a child enters foster care through a VPA (*entrustment or non-custodial foster care agreement*), the only judicial language criterion is contrary to the welfare (CTW)/best interest (BI). See [Section 1.3.1.1](#) for VPA types. There are no initial judicial language requirements for children who enter care through a VPA. Title IV-E eligibility is permitted for the first 180 days of the foster care placement.

### 1.5.2.1 Contrary to the Welfare / Best Interest (CTW/BI)

To extend Title IV-E eligibility beyond 180 days, judicial language shall be obtained to the effect that continued voluntary placement is in the child's best interest. This judicial determination may be made at any time during the 180 days following the final required signature on the agreement. If the CTW/BI judicial language requirement is not made by the 180<sup>th</sup> day, the case becomes Title IV-E ineligible on the 181<sup>st</sup> day and will remain ineligible for the duration of this foster care episode.

**Note:** Although custody transfer to the LDSS may occur, it is not requisite to meet Title IV-E eligibility requirements.

### 1.5.2.2 Reasonable Efforts (RE)

Reasonable efforts to prevent a child's removal from the home *are* not required when the child enters foster care pursuant to a VPA.

## 1.5.3 Documentation for judicial determinations

- **Affidavits and Nunc Pro Tunc.** Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of "reasonable efforts" and/or "contrary to the welfare" determinations. A nunc pro tunc order is an order in and of itself that provides new information to a previous court order in an effort to include specific information that was inadvertently omitted. Nunc pro tunc is Latin which means "now for then." Nunc Pro Tunc orders verifying the correct date upon which a hearing was conducted and that the original date was an administrative oversight is acceptable.
- **State Law.** Court orders solely referencing Virginia Code or Regulation to substantiate judicial determinations are not acceptable.
- **Court Transcript.** Although federal Title IV-E rules allow a transcript of the court proceedings as acceptable documentation that the judicial determinations were made at the initial court hearing, this is not an option in Virginia since Virginia's courts do not make transcripts of these hearings.

- **Effective Date.** The court order effective date is the date the judge signed the completed court order; it is not necessarily the date of the hearing.

#### 1.5.4 AFDC relatedness

In order to be eligible under Title IV-E, a child shall have been eligible for AFDC (as it existed in the State's Title IV-A plan on July 16, 1996) in the specified relative's home *in the month in which the child was legally or physically removed (whichever is first)*. *The AFDC eligibility criteria cannot be based on the household circumstances that occur after a child's removal.* If the child was not eligible in the specified relative's home from whom the child was *physically or legally removed*, the child will be ineligible for Title IV-E for the duration of that episode of foster care.

**Example 1:** *A child was physically removed from the home on December 31st. The LDSS could not get to court until January 2nd when a petition and court hearing were filed and heard. The eligibility month will be January. The AFDC eligibility criteria, including age, deprivation, living with, citizenship, and financial assistance would be based on the month the child was physically removed from the home and in this case the AFDC relatedness criteria month would be December.*

**Example 2:** *A child was removed from the home on December 10th. The LDSS obtained an ERO from the court on December 11th. The eligibility month and AFDC relatedness criteria month are the same, December.*

##### 1.5.4.1 Verification methods

All AFDC relatedness criteria shall be verified. A copy of each document used for verification shall be maintained in the eligibility case record. In most situations, the *Benefit Programs Specialist* shall examine other third party sources, such as state and federal information systems, for verification.

- **Written Statement.** The use of a written statement made by the *Family Services Specialist*, legal guardian, or other relative, may be used as an addendum to the application for AFDC verification purposes. The written statement shall be signed and dated by the person making the statement. The person making the written statement shall have an intimate knowledge of the child's situation and can attest that the information provided on the written statement is accurate.
- **Best Available Evidence.** This is a term that describes the allowable use of documentation that, based upon a preponderance of evidence, can be reasonably viewed to satisfy certain Title IV-E eligibility requirements for Deprivation, Financial Need including resources and income, and the Removal Home and Specified Relative. The *Benefit Programs Specialist* shall always seek the most complete and accurate documentation. The use of best available evidence can only be used to satisfy AFDC

relatedness and not for any other Title IV-E criteria. The areas where the “best available evidence” criterion cannot be applied are with respect to initial petitions, court orders, voluntary agreements, proof of citizenship or qualified alien status, and documentation of mental or physical disability. The federal law requires that these documents be in the case records to support the determination of Title IV-E eligibility.

Workers should not delay eligibility determinations if the documentation is sufficient to make an informed, reasonable decision. The information reported by the *Family Services Specialist* is acceptable as the best available information of eligibility factors, unless the *Benefit Programs Specialist* has conflicting information from another source. *Benefit Programs Specialist* should use prudent judgment in determining what evidence substantiates Title IV-E eligibility. Information obtained from agency records or computer matches is also acceptable, if the agency is satisfied that the information reasonably reflects the assistance unit's situation in the eligibility month. Databases that may be accessed include ADAPT (Application Benefit Delivery Automation Project), APECS (Automated Program to Enforce Child Support), SVES (State Verification Exchange System), DMV (Department of Motor Vehicles), SPIDeR (Systems Partnering in a Demographic Repository) MMIS (Medicaid Management Information System, with the exception of citizenship) and VEC (Virginia Employment Commission) wage records. Self-declared income statements are acceptable under this standard

The *Benefit Programs Specialist* shall document the case record with respect to the method and source of information used in establishing eligibility.

#### 1.5.4.2 Citizenship/Alien requirement

The *Benefit Programs Specialist* shall verify United States (U.S.) citizenship or qualified alien status for the foster care child to meet AFDC eligibility requirements. *Acceptable forms of verification are public birth record, birth certificate, passport, hospital proof of birth letter on hospital letterhead, attending physician statement showing place of birth, final adoption decree showing child's name and place of birth in U.S., U.S. Citizen Identification Card (I-197 or I-179) and naturalization paperwork. (Note: A Social Security Card is not a valid verification of citizenship.)* If the child does not meet the AFDC citizenship/alien requirement, the child cannot be Title IV-E eligible during this episode of foster care.

- **U.S. Citizenship.** U.S. citizenship includes individuals who are:
  - Born within the United States, regardless of the citizenship of his parents;

- The Child Citizenship Act (CCA) declares that children who are younger than 18 years of age and have at least one parent who is a US citizen whether by birth or naturalization who immigrate to the United States with a U.S. citizen parent automatically acquire US citizenship upon entry for lawful permanent residence; or
- Born outside the United States of alien parents and has since been naturalized as a U.S. citizen. A child born outside the United States of alien parents automatically becomes a citizen after birth if his parents (the mother, if born out of wedlock) are naturalized before he becomes 16 years of age.
- **Qualified Alien.** As indicated in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, the term "qualified alien" refers to:
  - An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);
  - An alien who is granted asylum under section 208 of the INA;
  - A refugee who is admitted to the U.S. under section 207 of the INA;
  - An alien who is paroled into the U.S. under 212(d)(5) of the INA for a period of at least one year;
  - An alien whose deportation is being withheld under section 243(h) the INA as in effect immediately before April 1, 1997, or section 241(b)(3) of the INA;
  - An alien who is a Cuban or Haitian entrant; or
  - An alien (or the child of parent) who has been battered or subjected to extreme cruelty in the U.S.
- **Unqualified Alien.** Unqualified aliens do not meet the citizenship criterion for AFDC and are not Title IV-E eligible. Aliens who do not meet the qualified requirements include, but are not limited to:
  - Undocumented aliens;
  - Aliens legally admitted on a temporary basis for work, study, or pleasure; or
  - A child who is in the U.S. under a visitor or tourist's visa or under a student arrangement.

#### 1.5.4.3 Age requirement

To meet the AFDC age requirement, the foster child shall have been under the age of 18 years old at the time of removal via court order or VPA.

#### 1.5.4.4 Eligibility month

The eligibility month is the month a petition was filed or court proceedings were initiated to remove the child or the month a VPA is signed by the last party whose signature is required. An example of the initiation of court proceedings is typically a petition for removal.

**Example:** LDSS agency files a petition for a child's removal from his/her *parent* on April 28<sup>th</sup>. The court order date authorizing his removal was held on May 1<sup>st</sup> and the child was immediately taken into care. Since the initiation of court proceeding (the petition) was made in April, the eligibility month for AFDC purposes is April.

**Note:** AFDC relatedness criteria shall be based upon information within the *month the child was physically or legally removed (whichever is first)*.

#### 1.5.4.5 Removal home/living with requirement

"Removal home" for AFDC relatedness purposes means the home of the specified relative (see [Section 1.3.2](#)) from whom the child was *physically or legally removed (whichever is first)*. *A home exists so long as the relative exercises responsibility for the care and control of the child, even though either the child or the relative is temporarily absent from the customary family setting.* A child shall have been living with the specified relative who had legal custody during, or within six months prior to, the eligibility month. *There is an exception to the six month look back requirement, when the specified relative maintained care and responsibility but the child was living outside the home due to residential placement. In this circumstance, as long as the specified relative exercised responsibility for the care and control of the child, the "lived with requirement" will have been met.*

- **If the child was not living with the specified relative who had legal custody** but was living with an interim caretaker at time of removal, federal policy allows for a six month "look-back" period to establish if the child lived with the specified relative who had legal custody at any time during the six months prior to the eligibility month. If the child was living with the specified relative who had legal custody at the time of removal, there would be no six month look-back policy applied.

**Example 1:** Child physically removed from the home of *grandparent* on *March 3, 2010* (court order dated *March 3, 2010*). The *grandparent* did

not have legal custody. The *grandparent* was an interim caretaker therefore the six-month look-back policy would be applied to determine if the child had lived with the specified relative from whom legal custody is being removed. Legal custody of child remained with parents. The child last lived with the parents *November 12, 2009* which is within six (6) months. The child would meet the AFDC living with requirement.

**Example 2:** Legal custody of child is with a non-relative. Child is removed from the home of a non-relative via a court order. Because legal custody is held by a non-relative, this child cannot be Title IV-E eligible as legal custody shall be with a specified relative at the time of removal. The six-month look-back period would not apply.

**Example 3:** Child is removed from the home of aunt who had legal custody of child at the time of removal. No six-month look-back would apply as the child lived in the home of specified relative who had legal custody at time of removal.

- When counting the six-month look-back period, the *Benefit Programs Specialist* looks at the six months prior to the eligibility month. However, if applying the six-month look-back to determine living with requirements, it will not change the eligibility month used for AFDC screening. If the child meets the six-month look-back requirement, the *Benefit Programs Specialist* shall include the child in the specified relative's home during the eligibility month to conduct the AFDC screening even though the child was physically residing elsewhere.

**Example 4:** Child removed from the home of an interim caretaker via a court order dated June 23, 2010. The eligibility month is June 2010. The six month look-back period would go back to December 2009. If the child lived with the specified relative who had legal custody at any time between December 1, 2009 and May 31, 2010, the living with requirement is met. The child will be considered to have been living with the specified relative during June 2010.

- A child is considered to be living in the home even though the child or specified relative is temporarily absent from the customary family setting for reasons such as hospitalization, education or training, a vacation, or a visit. Additionally, a home may exist in situations where the family lacks a fixed home address or is otherwise considered homeless as long as the specified relative is exercising responsibility for day-to-day care and control of the child.
- If the child does not meet the requirements for living arrangements, the child cannot be Title IV-E eligible during this episode of foster

care as the child has failed to meet one of the conditions of AFDC relatedness.

- If an adjudicated delinquent is taken directly from detention (not corrections) and placed into foster care, the *removal home and living requirement is based on the release date from detention and based on the custodial circumstances at that time. The State shall establish the child's eligibility at removal (which includes meeting the AFDC eligibility requirements and judicial determinations to the effect that the child's removal from the home was contrary to his/her welfare and that reasonable efforts were made to prevent such removal).*

**Note:** If an infant is taken directly from the mother after birth and placed into foster care, and the mother is a hospital patient or a prison inmate, the hospital or prison would be considered the removal home, and therefore also meet the "living with a specified relative" criterion. *An otherwise eligible child born to a woman who is a prison inmate or a patient in a hospital, and deprived of the support of an absent father, would be eligible for the Title IV-E foster care program if removed from the "home of a relative" and placed in foster care in accordance with section 472 of the Social Security Act (the Act).*

**Note:** *Under AFDC policy, the living with standard has been met so long as the relative exercises responsibility for care and control of the child.*

#### 1.5.4.6 Assistance Unit (AU)

The AFDC assistance unit is the grouping of persons who were residing in the removal home at the time of the child's physical removal whose income and resources shall be considered during the eligibility month when evaluating AFDC eligibility. The assistance unit is required to include the parent and minor siblings of the child entering foster care. When the household consists of more than one group of children, the determination of which children will comprise the AU is based on the legal responsibility of the parents living in the home during the month of removal. Children who are siblings of the child entering care are required AU members. *Other children who are not siblings of the child entering foster care are not required assistance unit members and must be excluded when determining initial eligibility.*

Changes which occur in the removal home after the child's physical removal cannot be used to find the child eligible or ineligible.

- **For children legally removed from the parent's home** (biological or adoptive), the AU shall include all of the following individuals who were residing in the removal home at the time of the child's physical removal.

- The foster child.
  - Birth or adoptive parents.
  - Any minor siblings (birth, adoptive or half) of the child.
  - The legally acknowledged parent (biological/adoptive/step) of any minor sibling (biological/ adoptive/half) who is in the assistance unit.
- **For children who were removed from the home of a specified relative other than a parent**, the AU shall include all of the following individuals residing in the removal home at the time of the child's physical removal and whose income and resources shall be considered during the eligibility month when evaluating AFDC eligibility.
    - The foster child.
    - Any minor siblings (birth, adoptive or half) of the child.
    - The legally acknowledged parent (biological/adoptive/step) of any minor sibling (biological/ adoptive/half) who is in the assistance unit.

**Example 1:** The removal home consists of foster child, foster child's sibling, parent, and cohabitant who is the parent of the sibling. The AU would be four people. Even though the cohabitant is not related to the foster child (by blood or marriage) they are still included because they are the parent of the sibling to the foster child which draws the cohabitant into the AU. The cohabitant's income and resources would be counted.

**Example 2:** *The removal home consists of the foster child, FC's sibling, parent and stepparent (not a parent to any of the children). The AU would be three people. The stepparent would not be counted in the AU, but their income would be deemed and counted as unearned income to the AU.*

**Example 3:** *Four siblings entered care. All four were living with their Parent #1 at the time of the removal, but one sibling, Sally, was not in the legal custody of Parent #1. Sally had lived with her Custodial Parent #2 within the last six months. When figuring the AU for Sally, it would include herself and her Custodial Parent #2, as none of her siblings lived with her Custodial Parent #2 in the month of removal. When figuring the AU for the remaining children, the AU would be an AU of five. The AU would include their Parent #1 and all four siblings (including Sally) because Sally was residing in the home with her siblings at the time of removal.*

**Exceptions:**

- **Supplemental Security Income (SSI) recipients:** If the child entering foster care receives SSI, the child shall be included as a member of the Assistance Unit. The SSI income and resources of the child are not considered in determining AFDC eligibility but, any other income (such as SSA, Veteran's, and child support) is counted. If there are any other household members who receive SSI, they are not included in the Assistance Unit and as such, the income and resources of those members are not considered in determining AFDC eligibility

*Example – The removal home consists of foster child (who receives SSI), the foster child's sibling (who receives SSA), and the foster child's parent. This is an AU of 3 people. The foster child's SSI income and any resources will not be counted. All other income and resources in the AU will be counted.*

- **Any sibling who is receiving adoption assistance (Title IV-E or State assistance)** shall not be counted toward the total number of AU members, and as such, the income and resources of that household member receiving adoption assistance shall not be considered in determining AFDC eligibility. If the only AU member is the child being removed who is an adoption assistance recipient, the child shall count toward the AU member size, but the income and resources of that child is not considered in determining AFDC eligibility.
- **Any child of the foster child** shall not be counted toward the total number of AU members and as such, any income and resources are not considered in determining AFDC eligibility.
- **Other children who are not siblings** of the child entering foster care are not required units members and must be excluded when determining initial eligibility.
- **Any parent that is not a U.S. citizen or qualified alien** as described in [Section 1.5.4.2](#), shall not be counted toward the total number of AU members, and the income and resources of that parent shall not be considered in determining AFDC eligibility. However, their income should be deemed using the procedures in [Section 1.5.4.11](#).

#### 1.5.4.7 Deprivation requirement

To meet the AFDC relatedness requirement of deprivation, the child shall be deprived of the support or care of at least one biological or adoptive parent in the home during the removal month. Deprivation shall be met in the month of, but prior to, the child's removal from the home. The establishment of the child's deprivation may not be based on household circumstances that occur after a child's removal.

**Example:** Child removed from the home of *Parent #1* on April 8. The household composition on April 8 consisted of the child and *Parent #1*. Child was deprived based on the absence of a *second parent*. On April 20 *Parent #2* of the child returned to the removal home. For initial screening purposes, the AFDC assistance unit will consist of the child and *Parent #1* only. *Parent #2* will not be included in the AFDC assistance unit as *Parent #2* was not in the home at the time of removal.

**Types of Deprivation.** Deprivation shall be established under at least one of the following circumstances:

- **Death of a biological or adoptive parent.**
- **Continued absence of a biological or adoptive parent from the home** means that the parent's known or indefinite length of absence interrupts or ends his/her functioning as a provider of maintenance, physical care, or guidance for the child. The following includes, but are not limited to, typical situations of continued absences:
  - Separation or Divorce: One of the parents is no longer living in the same house.
  - Institutionalized/Incarcerated: One of the parents is in an institution or incarcerated.
  - Deportation: One of the parents is deported outside the United States.
  - Paternity not established.

**Note:** Military service (includes active or reserve/national guard status) does not constitute a continued absence and does not meet the definition of deprivation.

**Note:** A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence is considered absent from the home. Once the sentence is complete, the convicted offender can be included in the AU.

- **Physical or mental incapacity of a biological or adoptive parent** by having a physical or mental defect, illness, or impairment. Verification of a parent receiving Supplemental Security Income (SSI) or Old Age, Survivors, and Disability Insurance (OASDI), is sufficient as documentation of deprivation. If a parent is not receiving SSI or OASDI, the incapacity shall be a documented mental or physical incapacity to the extent that the parent cannot support or care for the child (exact

wording from the CWPM). The incapacity shall be supported by competent medical testimony and shall be of such a debilitating nature as to reduce substantially or eliminate the parent's ability to support or care for the child.

- **Unemployment or Underemployment of the Parent** occurs when the child lives with both parents and is deprived of parental support based on unemployment or *underemployment* by either parent. Both parents shall live in the home and neither may be disabled. *Unemployment or underemployment of a parent is categorized in AFDC policy as:*
  - No longer working;
  - Underemployed as evidenced by working less than 100 hours a month; or
  - Working or expected to work 100 hours or more for one month on a temporary basis at the time of removal.

**Example 1** – *Child was removed from the home of both parents. Parent #1 works 40 hours per week and Parent #2 is unemployed. Deprivation would be met because Parent #2 is unemployed.*

**Example 2** – *Child was removed from the home of both parents. Parent #1 works 15 hours per week and Parent #2 works 40 hours per week. Deprivation would be met because Parent #1 is underemployed as evidenced by working less than 100 hours per month.*

#### 1.5.4.8 Treatment of resources

Resources are considered available to those members of the assistance unit during the *removal* month both when actually available, and when the member has a legal interest in a liquid asset and has the legal ability to make such assets available. Additionally, "life rights" do not meet the definition of ownership. A resource is determined by its equity value, which is the current market value minus any debts.

- **Resource Limit.** The maximum value of resources available to child's AFDC assistance unit shall have a combined value of not more than \$10,000 for the child to meet the resource limit for the financial need criterion. If the AFDC assistance unit's resources exceed \$10,000, the child will not be Title IV-E eligible for the duration of that foster care episode.

- **Countable Resources.** These are resources available to the assistance unit that are to be included (countable) when making a financial need determination. **Countable resources include, but are not limited to:**
  - Checking accounts.
  - Savings accounts.
  - Credit union savings.
  - Savings bonds.
  - Accessible trusts.
  - Stocks/Mutual funds.
  - 401K accounts.
  - Real estate/vacation home/income property.
  - Vehicles (If one vehicle is owned, the equity in that vehicle in excess of \$1,500 is counted as a resource.) If more than one vehicle is owned, *subtract \$1,500 from the highest equity value*, the equity of all other vehicles is counted as a resource.
  - Cash value of insurance policies owned by members of the assistance unit.
  
- **Exempt Resources.** Resources available to the assistance unit that are to be excluded (non-countable) when making a financial need determination regarding the resource limit. Exempt resources include, but are not limited to:
  - Monetary or in-kind value of benefits received from federal or state assistance programs.
  - Inaccessible trusts.
  - Burial plot (one per assistance unit member).
  - Bona fide funeral arrangements of up to \$1,500 equity value (one per assistance unit member).
  - Home of residence, lot and all contiguous property.
  - Household furnishings and clothing.

- Undergraduate or graduate federal or state school loans or grants.
- Farm/business inventories used to produce income.

**Note:** The resource limit prior to November 1, 1997 is \$1,000. The resource limit from November 1, 1997 to December 13, 1999 is \$5,000 due to the implementation of the Adoption and Safe Families Act of 1997. The resource limit after December 14, 1999 is \$10,000 due to the Chafee Foster Care Independence Act of 1999.

#### 1.5.4.9 Income standard

- **Total Countable Gross Income.** The gross amount of countable income received during the *removal* month (*up to the date of removal*) by the AFDC assistance unit is countable earned and unearned income, which includes deemed income, of the assistance unit.
- **Countable Earned Income** refers to earned income of an AU member by receipt of wages, salary, commission, and/or through self-employment prior to any deductions for taxes, *and this could include earned wages the AU member has not yet been paid (up to the date of removal)*. Countable earned incomes include:
  - Wages, salaries, tips (before taxes).
  - In-kind income for work (e.g., shelter received for work).
  - Jury duty pay.
  - Vacation pay.
  - Worker's Compensation.
  - Self-employment minus business expenses.
  - Severance pay.
  - Bonuses.
- **Countable Unearned Income** is income received by an AU member for which no service is performed, *and this could include income the AU member has not yet been paid (up to the date of removal)*. Countable unearned incomes include:
  - Armed forces pension or disability allotment.

- Child support/alimony, minus first \$50 received per month by the assistance unit.
  - Disability insurance.
  - Non-recurring lump sum payment received during the *removal* month (**Examples:** retroactive Social Security benefits, stock dividends, life insurance settlements, etc.).
  - Income continuation payments/royalties.
  - Inheritance payments.
  - Interest, (cash assets, bank account, certificate of deposit).
  - Retirement or Pension (union, private or government).
  - Social Security benefits (excluding SSI).
  - Unemployment compensation.
  - Striker's benefits.
  - Income deemed from stepparents and ineligible alien parent (see [Section 1.5.4.11](#)).
- **Exempt Income.** Certain types of earned and unearned income are excluded (non-countable) when determining if the child meets the financial need requirement for AFDC eligibility. Sources of earned and unearned income that are excluded per person include, but are not limited to:
    - Payments from: Supplemental Security Income (SSI); Auxiliary Grant (AG); Temporary Aid for Needy Families (TANF); or Virginia Initiative for Employment Not Welfare (VIEW); etc.
    - Food programs, (e.g. Food Stamps, WIC, etc.).
    - Earned income (including financial aid) of a dependent child who is a full-time student.
    - Current monthly support obligation or a voluntary support payment received by the assistance unit not to exceed \$50.
    - Undergraduate or graduate federal or state school loans or grants and work study programs.

- Training allowances from the Virginia Department of Rehabilitative Services.
- Foster care or adoption assistance payments.
- Veteran benefits for education if VA is the only source of educational assistance. If other educational benefits are available, the entire amount of the VA benefit may be disregarded if VA benefit is used to help purchase tuition, books, fees, school equipment, or transportation to and from school.
- Trust funds not available on demand.
- Loans, including reverse equity loans, endorsed for repayment.
- Income tax refunds (Earned Income Tax Credit).
- Housing and Urban Development (HUD) Section 8 and Section 23 payments.
- Federal major disaster and emergency assistance.
- Small non-recurring gifts not to exceed \$30 per calendar quarter (e.g. birthdays, graduation, etc.).

#### **1.5.4.10 Income conversion**

When determining the earned and unearned income amount of the child's AFDC assistance unit, when possible use the actual monthly gross income received in the *removal* month. If the worker has to convert income payments into an average monthly amount use the following method:

- **Weekly.** Income received weekly is multiplied by 4.3.
- **Biweekly.** Income received every two weeks is multiplied by 2.15.
- **Semimonthly.** Income received twice per month is multiplied by 2.

*Once the monthly average has been established, the amount needs to be divided by the number of days in the month of removal, and multiplied by the number of days the child was in the home (up to removal).*

#### **1.5.4.11 Deeming income**

In certain situations, the income of an individual living in the removal home who is not included in the AFDC assistance unit shall be evaluated to determine if any portion of that individual's income is considered available to the AFDC

assistance unit. This process is called “deeming.” All deemed income is considered as unearned income to the AFDC assistance unit.

- **Deeming Groups.** The person(s) whose income is deemed toward the child’s assistance unit are:
  - Stepparent. The stepparent was living in the removal home but is not included in the AFDC assistance unit. Income of a stepparent will be deemed available regardless of whether the legal parent of the child is also living in the removal home. Divorce terminates the stepparent’s financial responsibility.
  - Alien parent. The parent was living in the removal home but is ineligible for AFDC due to his alien status.
- **Deeming Procedures.** The following steps are to be used in deeming the income of individuals whose income is deemed toward the child’s assistance unit but is not a member of the assistance unit. *The Deeming Worksheet is available in the SPARK Title IV-E Resource Tool Section and should be completed using the following steps.*
  - **Step 1:** Determine the deeming group’s countable gross earned income in the eligibility month;
  - **Step 2:** Subtract \$90 for each employed stepparent or ineligible alien parent.
  - **Step 3:** Add countable unearned monthly income;
  - **Step 4:** Subtract any court ordered child support and alimony paid by member of the deeming group to support individual who is not in the household;
  - **Step 5:** Subtract any payments made by members of the deeming group to individuals not living in the home but who are or could be claimed by him or her as dependents for purposes of determining his or her Federal personal income tax liability; and
  - **Step 6:** Subtract the 100% Standard of Need amount for the deeming group’s AFDC group size.
  - **Step 7:** The total remaining is the Total Deemed Income.
- **Total Deemed Income.** This is the portion of the income that shall be included as unearned income to the child when determining if the child meets the financial need criterion.

#### 1.5.4.12 Standard of need

The *Benefit Programs Specialist* shall determine the number of members in the AFDC assistance unit (see [Section 1.5.4.6](#)) to determine the total income that is available to the child. The total countable gross income of the AFDC assistance unit is then evaluated against a two-part Standards of Need comparison. Localities in the State have been assigned to AFDC Grouping 1, II, or III. The Standard of Need is to be applied based on the LDSS groupings *as established in 1996. Title IV-E application is based on AFDC regulations at that time and is not affected by changes in TANF program or other Benefit programs requirements.*

- **Part One.** The total countable gross income of the child's AFDC assistance unit shall be equal to or less than the amount indicated for the number of members in the AFDC assistance unit on the 185% Standard of Need Income Chart. If the total countable gross income is equal to or less than the indicated amount, proceed to Part Two. If the countable income is above the 185% Standard of Need limit, the child is not Title IV-E eligible for the duration of that foster care episode.
- **Part Two.** This is done by subtracting allowable deductions from the countable earned income, and then adding the adjusted earned income to the countable unearned income. The total countable adjusted income of the child's AFDC assistance unit is then evaluated against the 100% Standard of Need Income Chart. *Please refer to the AFDC100% Standard of Need Worksheet found on SPARK in the Title IV-E Resource Tools folder.*

### 1.6 Ongoing requirements

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Use of Title IV-E funds for the maintenance needs of children who have been screened and found eligible for Title IV-E may vary over the course of a foster care episode. A child may lose and regain eligibility for payments on a frequent basis depending on the specific changes which might occur in the child's situation. Ineligibility *for payments* may not permanently deprive the child of future Title IV-E payments during the current foster care episode.

Certain conditions that render a previously Title IV-E eligible child as ineligible *for payments* may be corrected. *For example, placement requirements have been met.*

The *Benefit Programs Specialist* shall advise the *Family Services Specialist* and any required agency fiscal staff of the eligibility *for payments* status and the duration of any periods for which Title IV-E funds cannot be used by completing [Title IV-E Foster Care Notice of Action](#) (Form # 032-04-0079-02). This NOA form should be completed for an increase/decrease in payment, suspension or reinstatement of the maintenance payment, and termination due to the child's ineligibility for Title IV-E.

The following items may, under certain circumstances, impact the child's payment eligibility:

- Age.
- Placement.
- Voluntary placement lasting 180 days and the LDSS has not obtained a court order with a judicial determination to the effect that continued voluntary placement is in the child's best interest.
- SSI *payments*.
- Ongoing annual judicial review.
- Timely annual VEMAT assessments.

### 1.6.1 Age Requirements

A child is eligible to receive assistance until he/she reaches the age of 18. The child is eligible for the entire month in which his or her 18<sup>th</sup> birthday occurs if they have not attained age 18 on the first day of that month.

Eligibility may continue beyond the age of 18 if the child is enrolled in a secondary school or vocational/technical school of secondary equivalency and expected to complete the high school or vocational/technical program prior to or in the month of his or her 19<sup>th</sup> birthday. The eligible 18 year old child is considered to be enrolled full-time, regardless of the number of courses or length of time in school. The child is eligible for the month in which completion of the school program occurs; however, eligibility cannot be extended past that month. The program is considered completed on the last day of final exams or, if exams are not required, the last day of scheduled classes, or the date the graduation ceremony is scheduled to occur, whichever is most advantageous in providing Title IV-E assistance to the child.

Under no circumstances shall eligibility continue beyond the child's 19th birthday. If, at any time during the child's 18<sup>th</sup> year, it is determined that the child will not complete the program of study by the month of his 19<sup>th</sup> birthday, the child's Title IV-E eligibility ceases effective the date that notification is received. The *Benefit Programs Specialist* shall document when this case is no longer eligible for payment.

**Example 1:** *Title IV-E child that turns 18 in Dec 2013 has completed GED and received scores but will not receive certificate until graduation in May of 2014. Child enrolled in a program (Great Expectations) that helps ease foster care children into college courses. Child will start taking classes in January. Will child still be eligible for Title IV-E until child receives GED certificate in hand?*

*Answer: No, the child can no longer be Title IV-E eligible after 12/31/13 since the child has taken the GED test and has scores in hand. Program is considered completed on the last day of scheduled classes and child has scores in hand confirming they have finished the class.*

### 1.6.2 Placements

The child shall reside in a placement that meets Title IV-E eligibility requirements. *Placements may be in foster family homes or child care institutions. For Title IV-E eligibility, the child's foster family home must comport with the safety requirements under § 471(a)(20) of the Act as applicable, 45 CFR § 1356.30, and ACYF-CB-PI-10-02. The Title IV-E agency must document that the foster parents meet the applicable safety requirements for the period for which the Title IV-E foster care maintenance payments are made on behalf of the child residing in a foster family home. Federal requirements under 45 CFR § 1356.30(f) mandate the Virginia Department of Social Services Division of Family Services in collaboration with the Virginia Department of Behavioral Health and Developmental Services and Virginia Department of Social Services Licensing Division to document that the background checks with respect to the caregiver staff of the childcare institution are completed in accordance with the licensing agency's requirements where the childcare institution is located.* All family foster homes or child care institutions shall be fully approved or licensed by the state in which the home or facility is located. All children in foster care placement are eligible to receive maintenance payments. Maintenance is defined by federal law as: payments made on behalf of a child to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel for the child to visit with family or other caretakers and to remain in the school in which the child was enrolled at the time of placement. Since foster care maintenance payments are not salaries, foster parents shall often work outside the home. Therefore, child care that provides daily supervision during a foster parents working hours when the child is not in school is an allowable expenditure under Title IV-E. Section 13 of the Foster Care *manual* provides the details for appropriate daycare costs and use of funds.

**Note:** *Federal requirements to document verification of safety compliance for Children's Residential Facilities as provided on the CRF matrix and/or Foster Homes (LCPA or LDSS Resource Homes) as provided to the VDSS Home Office on the foster home matrix.*

Every time a child changes placement, the *Family Services Specialist* is to report the change **within three (3) calendar days** to the *Benefit Programs Specialist* and provide the required foster home certificates, checklist, license, verification of criminal records and CPS verifications and financial agreement for the placement.

**Note:** Whenever a child is absent from the foster care placement, the *Benefit Programs Specialist* shall determine if the absence will impact the payment to the

foster parents. If the absence is temporary (not to exceed 14 days) and the child returns to the same provider, the provider may be paid for the entire month. Temporary absences from the placement for reasons such as hospitalization, education or training, a vacation or a visit do not affect payment. However, if the absence exceeds 14 days or the child does not return to the same provider, the payment shall be prorated based on the actual number of days the child was in each placement. The last day of the placement is not included in the prorated payment.

#### **1.6.2.1 Emergency foster home placement**

*This is a foster family home where a child may be temporarily placed for up to 60 days. The home meets the requirements per Foster Care guidance Section 6.8 for approval, and federal safety requirements including valid national fingerprint background result(s) and Central Registry verification(s) have been received for all required household members prior to the use of Title IV-E funding. Title IV-E funding may begin the first day of the month in which all federal safety requirements are met. If placement is not for the full month, payment would be pro-rated to the first day of placement.*

#### **1.6.2.2 Resource family homes**

These are private homes that have been dually approved to provide parenting to foster and, if necessary, adopt a child placed in the home. Resource homes shall meet standards established by the State Board of Social Services and be approved by a LDSS or a LCPA. Homes may be providers for more than one agency.

These homes receive a basic maintenance payment based on the age of the child and may also receive enhanced maintenance payments as a result of use of the VEMAT.

#### **1.6.2.3 Treatment foster home**

A Treatment Foster Home is an LDSS or LCPA home where the foster parents have received additional training in order to meet the special needs of children who have been identified as having emotional/behavioral, developmental, physical or medical disorders. These foster parents receive the basic maintenance payment based on the child's age and may receive additional payment for added daily supervision and support due to the behavioral, emotional or physical personal care needs of the child as assessed by the VEMAT. The therapeutic needs of a child shall be documented in the child's service record. Many LDSS agencies contract with LCPAs to provide this type of care.

#### 1.6.2.4 Children's residential facilities

Residential placement means placement in a licensed public or privately owned facility, other than a private family home, where 24-hour care is provided to children requiring enhanced supportive services.

Residential facilities also include:

- Group homes.
- Public child care institutions (with a capacity of 25 children or less).
- Psychiatric facilities.

Residential placement offers care and treatment for children as an alternative to the traditional family environment.

#### 1.6.2.5 Independent living arrangements

Independent living arrangements means a placement of a child at least 16 years of age who is in the custody of a CPA and has been placed by the CPA in a living arrangement in which he does not have daily substitute parental supervision. The placements are not eligible for Title IV-E payment.

#### 1.6.2.6 Interstate placements

The purpose of the Interstate Compact on the Placement of Children (ICPC) is to ensure that children placed out-of-state are placed in approved settings and receive continuing services and supervision necessary to ensure that their placements are appropriate and safe.

In order to use Title IV-E funds for a child placed in a family home or children's facility in another state, the home or facility shall be fully licensed or approved by the state in which it is located and safety requirements with respect to criminal record and CPS checks shall be satisfied. Documentation to verify the safety requirements are met and the placements are fully licensed shall be obtained and placed in the eligibility file, *including ICPC 100 A and B Forms from the Family Services Specialist*.

#### 1.6.2.7 Transferring custody to another LDSS

When custody is transferred to another jurisdiction, the LDSS transferring custody will copy the eligibility file in its entirety and forward the original eligibility file to the new LDSS. Additionally, the *Benefit Programs Specialist* will transfer the case in VACIS.

### 1.6.2.8 Placement documentation

The Eligibility file shall contain documentation that supports and validates all Title IV-E payments were made to a foster home or children's facility that remained fully approved or licensed during the entire time the child was placed in that home or facility. Every time a child changes placement, the *Family Services Specialist* shall report the change **within three (3) days** and provide required documentation for the new placement. All documents shall be current and cover the dates of the child's placement. This will require that the *Benefit Programs Specialist* monitor and establish follow-up procedures to obtain the current documentation.

The documentation that shall be maintained in the eligibility file includes:

- Agency approved Family Foster Home.
  - Checklist Form with documentation of *results of National Fingerprint Criminal Record Check, Virginia State Police Check (if applicable), Central Registry Check and Sworn Disclosure Statement* requested and received (dates shall be prior to child's placement in home if agency is utilizing Title IV-E funds).
  - Foster Home Certificate of Approval 032-03-136-1.
  - Emergency approvals will be documented with a copy of Emergency Approval Letter 032-04-0058-00.
  - *Financial Agreement.*
- Licensed Child Placing Agency Family Foster Home.
  - LCPA license.
  - Foster Home Certificate of Approval 032-02-0140-02.
  - *State form letter 032-02-0506-01-eng (03/15) Criminal Background Check Letter Verification without Conviction or 032-02-0507-01-eng (03/15) Criminal Background Check Letter Verification with Conviction with documentation of results of National Fingerprint Criminal Record Check, Virginia State Police Check (if applicable), Central Registry Check and Sworn Disclosure Statement requested and received (dates shall be prior to child's placement if utilizing Title IV-E funds).*
  - *Financial Agreement.*
- Children's Residential Facilities.

- Children's residential facilities/group homes may be licensed by different state agencies and may have different types of licenses. Only full and conditional licenses are acceptable for Title IV-E payments. Provisional licenses are NOT acceptable and do not meet the licensed placement requirements for Title IV-E payments. If the license has expired, the children's residential facility shall, at a minimum, provide a letter from the licensing agency that verifies licensure status remains current and for how long. The letters are typically provided to facilities that are licensed by Department of Behavioral Health and Developmental Service (DBHDS).
- Licenses status for VDSS approved children's residential facilities may be verified on the [VDSS public website](#) however an actual valid license is still required to be in the eligibility file.
- License status for DBHDS may be verified on the [Virginia Department of Behavioral Health and Developmental Services website](#) however an actual valid license is still required to be in the eligibility file.
- *Financial Agreement.*

**The following situations do not meet placement requirements and are not approved for Title IV-E payments unless otherwise indicated:**

- Provider has a provisional license.
- Child's whereabouts are unknown—runaway (Title IV-E payments end after 14<sup>th</sup> day).
- Child is hospitalized (Title IV-E payments end after 14<sup>th</sup> day).
- Child is in an independent living arrangement (living on his or her own).
- Child is on a trial home visit.
- Child is in detention for more than 14 days (not in custody of DJJ).
- Child is placed in boot camp or forestry camp.
- Child is placed in public group care facilities with more than 25 children.
- Child is placed in a training school.

### 1.6.3 Financial need requirements

#### 1.6.3.1 Resources

Once a child has been found eligible for Title IV-E, resources will not be a condition of eligibility. As of April 1, 2010 a child who has been determined AFDC eligible under Title IV-E at removal is considered to meet the AFDC need and deprivation requirements throughout the foster care episode regardless of subsequent changes in income, resources and parental deprivation.

#### 1.6.3.2 Income

Once a child has been found eligible for Title IV-E, income will not be a condition of eligibility. As of April 1, 2010 a child who has been determined AFDC eligible under Title IV-E at removal is considered to meet the AFDC need and deprivation requirements throughout the foster care episode regardless of subsequent changes in income, resources and parental deprivation.

#### 1.6.3.3 Lump sum payment

A lump sum payment is a nonrecurring payment not earmarked for a specific purpose. Examples of lump sum payments are retroactive Social Security benefits, stock dividends, and life insurance settlements. The receipt of a nonrecurring lump sum payment (excluding retroactive SSI benefits) by or on behalf of a child who has been found Title IV-E eligible, should be processed and used as directed (see [VDSS Finance Guidelines Manual, Local Finance Guidance, Section 3.50](#)).

#### 1.6.3.4 Receipt of Supplemental Security Income (SSI)

A child's initial Title IV-E screening is not affected by receipt of SSI benefits as the SSI payment is not considered in the Title IV-E eligibility determination. After Title IV-E approval, receipt of SSI should be evaluated by the *Family Services Specialist* to determine if continuation is in the best interest of the child. Notification to Social Security will be made by the *Family Services Specialist*. (See section 17.1.7 *SSI and maintenance in the Foster Care Manual*).

A child may receive Title IV-E foster care and SSI benefits concurrently as both are intended to meet the maintenance needs of the child. However, the SSI payment will be reduced dollar for dollar by the amount of any Title IV-E maintenance payment that is made. For this reason, the agency should determine which is more advantageous to meeting the child needs.

In high-cost placements, it is more financially advantageous for the agency to use Title IV-E for the child's maintenance needs. This should zero out and

result in a suspension of the SSI payment. While this is more financially advantageous to the agency (no local funds required), it may not be more advantageous for the child when:

- The child is near the point of adoption.
- The child is near the age of emancipation and being prepared for independent living.
- The child is near reunification with a low-income family.

If the child is in a family foster home and the monthly maintenance costs are below the monthly SSI payment, the agency could elect not to claim Title IV-E for payment and continue to receive the SSI payment to meet the child's maintenance needs. If the agency elects this method, the child will become ineligible for Title IV-E payments until SSI is suspended or ends.

If the child is in a family foster home and the monthly maintenance costs are less than the SSI check, the child could receive concurrent benefits (SSI *reduced payment* and Title IV-E). If the agency elects this method, the child will remain Title IV-E eligible.

**Example:** Monthly maintenance costs are \$326. The SSI check is \$623. The agency issues a Title IV-E maintenance payment of \$326 which reduces the SSI payment to \$297.

#### 1.6.3.5 Recurring monthly benefits

Recurring monthly benefits for the child, including SSI, SSA and Veteran Administration are to be placed in a special welfare account in the name of the child to be used for expenses on behalf of the child. Retroactive SSI payments to foster care children covering more than six (6) months of payments shall be paid directly into a separate dedicated account in a financial institution (see the Foster Care *Manual*, [Section 4.10.31](#)). For more information on special welfare account, see the [VDSS Finance Guidelines Manual, Section 3.50](#).

**Note:** Care should be exercised to assure that the child's SSI benefits are not suspended for more than 12 months, as this would cause the child to lose SSI eligibility and force the child to undergo a full redetermination of SSI eligibility.

#### 1.6.4 Annual Judicial Reviews (AJR)

If the child's entry into foster care was by way of an entrustment agreement, there are no federal annual judicial requirements required to maintain the child's Title IV-E eligibility status. Children in foster care due to a non-custodial foster care

agreement shall be subject to annual judicial reviews once the court approves the agreement.

After Title IV-E eligibility has been established initially, there shall be yearly judicial determinations that reasonable efforts are being made toward reunification or to finalize a permanent placement of the child. The *Family Services Specialist* should provide the *Benefit Programs Specialist* with copies of all court orders. If the order is not valid, the *Benefit Programs Specialist* shall notify the *Family Services Specialist* immediately. Failure to provide all annual judicial review orders could result in an inaccurate Title IV-E payment decision.

The first judicial determination regarding reasonable efforts to finalize the permanency plan shall be made within 12 months of the “date on which the child is considered to have entered foster care” (see *Foster Care Manual*, [Section 12.2.1.](#)) and at least once every 12 months thereafter while the child is in foster care.

The type of court order that is typically used for this purpose is the Foster Care Review Order or the Permanency Planning Order. The effective date of the court order is the date signed by the judge. The first goal is typically recorded on the Dispositional Order which is required within 60 days of the child entering foster care.

If the goal is not written on the order, the *Benefit Programs Specialist* shall request a copy of the first sheet of the current service plan that was submitted to the court for this hearing and attach it to the current court order. The service plan will identify the permanency goal.

Permanency goals are:

- Return to parent or prior caretaker.
- Placement with relatives.
- Adoption.
- Another Planned Permanent Living Arrangement.
- Permanent Foster Care.

To be considered “valid”, the court order shall be signed and dated by the judge and have reasonable efforts language that addresses the current permanency goal (goal written on current order) or any permanency goal that was on any prior court orders within 12 months of the current order. The *Benefit Programs Specialist* will then determine if the order meets the required time frame.

Initial Judicial Order – Valid order shall be received within 12 months of the date the child is considered to have entered foster care.

Subsequent Orders – Valid order shall be received within 12 months of the last valid order.

If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within this timeframe, the child is not eligible for Title IV-E payment at the end of the 12th month from the date the child is considered to have entered foster care or at the end of the month in which the subsequent judicial determination of reasonable efforts was due, and remains not eligible for Title IV-E payment until the beginning of the month in which such a judicial determination is made.

If the court finds that the agency has not made reasonable efforts to finalize the permanency plan, the case is not eligible for Title IV-E payment until the court issues a subsequent order that documented such efforts have been made.

**Note:** Every time a valid order is received, it will reset the due date for the next AJR

## 1.7 Entitlement to maintenance cost

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### 1.7.1 Initial entitlement

Title IV-E is an entitlement program and, as such, no flexibility exists with respect to satisfying the requisite eligibility criteria. If such eligibility criteria are not satisfied within the time frames prescribed in the regulation, the child is ineligible for Title IV-E funds. There are two types of Title IV-E claims that the State may make on behalf of a Title IV-E eligible foster child, administrative and maintenance. Eligibility for Title IV-E maintenance costs are determined by the Benefit Programs Specialist. Administrative costs are processed or reviewed by the Finance Division as a separate process.

#### 1.7.1.1 Maintenance

The *Benefit Programs Specialist* is responsible for determining eligibility and recommending payment for cases eligible for maintenance payments. Payments are not to be rounded.

A maintenance claim is made to secure federal matching funds to offset the monthly cost of foster care maintenance payments.

Maintenance payments may not begin until an approved placement has occurred and all initial eligibility requirements that shall be met are satisfied. Initial eligibility requirements are: initial judicial language, AFDC relatedness, and placement requirements. The effective date that the state may claim Title IV-E federal matching funds to offset the monthly maintenance cost of foster care is the first day of placement in the month in which all federal Title IV-E requirements have been met.

The amount of the monthly payment to the foster parent or child caring institution is the total amount of the child's requirements, less any cash income (other than the child's disregarded earnings) directly available to the child or to the foster parents or institution on his behalf.

#### 1.7.1.2 Supplemental clothing allowance

In addition to basic maintenance payments, the supplemental clothing allowance is available for every child, each year they are in foster care.

The clothing allowance should pay for needed clothing at initial placement, placement changes, for back-to-school, as the child grows; and if items are lost or destroyed.

The supplemental clothing allowance shall not exceed the designated rate posted in Section 17.3 of the *Foster Care Manual*, regardless if the amount was paid by Title IV-E, CSA or a combination of the two. It should be used by May 31<sup>st</sup> each year. Supplemental clothing allowances apply to all children regardless of funding source. The date the bill is paid determines the fiscal year in which the payment is counted.

Items allowable for purchase include basic clothing and accessories that any reasonable person would determine necessary and appropriate for any child.

All supplemental clothing allocations shall be verified and tracked by the *Benefit Programs Specialist* through documentation that the funds were used to purchase clothing for the designated child. This may include a purchase order to the store and receipt or a receipt from store(s) where the foster parents purchased the items. The decision as to the appropriateness and reasonableness of the items purchased is the responsibility of the *Family Services Specialist*.

#### 1.7.1.3 Amount of payment

Using information provided by the *Family Services Specialist*, the amount of the payment is determined as follows:

- **Adoptive Home.** The amount of maintenance paid for a special needs child placed in an adoptive home is determined and authorized by the *Family Services Specialist*. The amount of payment may be lower than, but shall not exceed, the established monthly rate for Title IV-E foster care payments. Adoption assistance payments may be made by the or through another public or nonprofit agency.
- **Foster Home.** The amount of the monthly foster care payment is the basic maintenance rate. Enhanced maintenance payment may also be paid if

a VEMAT was administered. (See VEMAT Guidance in Section 17.2 of the Foster Care *Manual*).

- **Enhanced Maintenance.** Some children require additional daily supervision and support provided by the foster or adoptive parents. These payments are called "Enhanced Maintenance Payments" established through administration of the VEMAT and are paid from Title IV-E funds if the child meets Title IV-E requirements. Otherwise CSA state pool funds or local only funds shall be used. This enhanced maintenance payment is made in addition to the basic Title IV-E payment. The payment amount page from the VEMAT shall be given to the *Benefit Programs Specialist* for inclusion in the Eligibility file and to establish the amount of the payment.
- **Children's Residential Facility (CRF).** The amount of the monthly foster care payment is the negotiated rate of allowable costs between the provider and the purchaser. The *Family Services Specialist* is responsible for providing the *Benefit Programs Specialist* with a copy of the Financial Agreement or contract, which documents the currently negotiated rate and the allowable costs to be paid by Title IV-E funds. Allowable costs include room and board, clothing, personal care, recreation, spending allowance, and the cost of additional daily supervision. The provider shall identify the daily supervision costs as a separate item. The *Family Services Specialist* will provide the *Benefit Programs Specialist* with a copy of the purchase of service order or the contract with the residential facility. Copies of either of these documents will serve as documentation of allowable costs.

If a daily rate is negotiated, the amount of the monthly payment will be determined by multiplying the number of days in care for the month by the daily rate. The monthly payment will change whenever the number of days in a month changes. If a monthly rate is negotiated, the payment for the month will be the monthly rate negotiated, unless the child was not in the facility for the entire month.

If the room and board rate does not include individual requirements items (clothing, personal care, recreation or allowance) the amount for those items as shown under standard rates of payment in the Foster Care *Manual, Section 17.1.3* will be made monthly to the facility on behalf of the child. In instances, where the amounts for individual requirement items are billed "as charged," the agency will reimburse the facility according to "as charged" bills. The *Family Services Specialist* shall assess whether clothing and supplies are needed and shall preauthorize all "as charged" bills.

### 1.7.1.3.1 Placement

The LDSS shall have responsibility for placement and care of the child. Federal Financial participation (FFP) may begin the first day of the month in which a foster home, LCPA, CRF or any allowable placement is in full compliance with the State's licensing standards. Additionally, FFP may begin the first day of the month in which the foster family home or childcare institution satisfies the criminal record and CPS checks. The *Benefit Programs Specialist* shall verify that the foster child's placement is fully-approved for Title IV-E payments through the following documentation:

- Checklist for Initial Provider Approval or Re-Approval;
- Agency-Approved Provider Home Approval Certificate or approval letter; or
- A copy of the LCPA's license and a copy of the foster family certificate, letter of approval with verification of criminal records and CPS; or
- A copy of the license for the child-care institution.

The child's eligibility record shall show the beginning and end dates for every placement. The foster home certificates will also show the beginning and end dates of the approval period (whether they are LDSS or LCPA homes) and the license approval dates for the LCPA or children's residential facility. All agency-approved provider homes and homes approved through an LCPA are approved for three (3) years. Children's residential facilities approval time span may vary depending on the type of institution and approving State agency.

If a foster family home or child-care institution is licensed for a portion of a month, the State may claim FFP for the entire month when the otherwise eligible child has resided in that home for the entire month. The State shall prorate any claims when the otherwise eligible child has resided in the home or institution for a portion of the month. A new license is required to make any subsequent month's payments. If a foster family home is placed on probation due to lack of compliance with a licensing or approval standard, the State may not claim FFP for foster care maintenance payments during the time that the foster home does not comply with the standards. However, if the home meets all of the licensure or approval standards but is on probation only in the sense that it is a newly licensed home requiring more frequent supervision by the agency, the period of probation would not preclude Title IV-E foster care payments being made on behalf of an eligible child in the home.

**Example 1:** Child entered foster care through a CHINS Order and was placed on April 10, in a home meeting full approval criteria. The initial court order had the required best interest/contrary to welfare language but lacked reasonable efforts language. The reasonable efforts requirement was met on April 25, (within 60 days of initial order). The child was screened and found to meet all AFDC relatedness criteria. Entitlement for Title IV-E maintenance payments may be claimed beginning April 10, since this was the first day of placement in the month in which all requirements were met.

**Example 2:** Local Agency did an emergency removal of child on March 31, and placed the child in a fully approved foster home. The Emergency Removal Order was signed on April 2, and had all initial judicial language. The child was screened and found to meet all AFDC relatedness criteria. Entitlement to Title IV-E for maintenance may begin April 1, as that is the first day of placement in the month in which all initial Title IV-E requirements were met. The judicial language is a requirement and that was not met until April 2.

**Note:** A child placed with his parents is not eligible for Title IV-E maintenance payments but may be eligible for TANF during a trial visit if the agency retains custody.

#### 1.7.1.4 Child care

*Title IV-E funds can be used for child care when the child care is provided in a legally operating facility or home that provides daily supervision. The Family Services Specialist will document in their file the foster parent(s) meet the requirement for child care expenses and provide the Benefit Programs Specialist with the requirements and copy of the license of the legally operating facility.*

*Child care is an allowable Title IV-E expenditure when the child care:*

- *Provides daily supervision during the foster parents working hours when the child is not in school; or*
- *Facilitates the foster parent's attendance at activities which are beyond the scope of "ordinary parental duties; and*
- *Is provided in a legally operating day care facility or home.*

**Note:** *Title IV-E funds are not allowable for a provisionally licensed child care facility.*

*As examples, child care is an allowable expenditure under Title IV-E for the foster parent to attend:*

- *Judicial or administrative reviews.*
- *Mandated team meetings by the court of the LDSS.*
- *Approved foster parent training.*
- *College classes when the foster child is not in school.*

*Child care is an unallowable Title IV-E expenditure when the child care is provided to facilitate a foster parent's participation in activities that are:*

- *Within the realm of "ordinary parental duties".*
- *Deemed a social service (i.e. community volunteerism or personal enrichment activities, etc.).*

*As examples, the following activities are not allowable expenditures under Title IV-E:*

- *Illness of the foster parent.*
- *Respite care.*
- *School conferences.*

**Note:** *Child Care centers need to be "legally operating". The agency does need to make sure the Foster Parent is working and they are only paying for the child care and a once a year registration fee. Extra charges such as meals, art fees, mat fees, etc., are not allowed.*

*There is a limit on child care Maximum Reimbursement Rate (MRR) as part of subsidized child care payments. The agency should follow Child Care and Early Childhood Development guidance as closely as possible. Child care centers need to be "legally operating". The MRR is the default reimbursement rate and is to be used unless a lower rate is posted in the system. Rate tables can be accessed in the VaCMS. The VaCMS will calculate the rates automatically based on the MRR information stored in the system.*

### **1.7.2 Ongoing entitlement**

If a child is initially determined Title IV-E eligible, the child continues to be Title IV-E eligible while under the care and placement responsibility of the agency if placement and licensing requirements are met and annual judicial hearings are completed when due. If these requirements are not met, the child will not be Title IV-E eligible until the requirements are met.

As of April 1, 2010 a child who has been determined at removal to be AFDC eligible under Title IV-E is considered to meet the AFDC need and deprivation requirements throughout the foster care episode regardless of subsequent changes in income, resources and parental deprivation. No additional eligibility reviews for ongoing entitlement are to be conducted.

A child may lose and regain Title IV-E eligibility from one month to the next, depending upon changes in placement or judicial review requirements. The temporary ineligibility does not permanently deprive the child of future payments. If the *Family Services Specialist* is unable to or does not provide the needed information, to reinstate Title IV-E eligibility, the *Benefit Programs Specialist* shall work with the *Family Services Specialist* to secure the required information in order to establish continuing eligibility.

## 1.8 Assignments of support rights

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Federal and State law and regulations outline the requirements for the State's Child Support Enforcement Program. In accordance with Title VI of the Civil Rights Act of 1964, the Virginia Division of Child Support Enforcement (DCSE) prohibits discrimination in all its services on the basis of race, color, national origin, or handicap.

DCSE has the authority to:

- Locate noncustodial parents (NCP).
- Establish paternity.
- Establish and enforce support orders.
- Establish and enforce health care coverage.
- Collect and disburse child support payments and pre-established spousal support.

DCSE is charged with collecting support in accordance with state and federal laws and policies and procedures for foster care children. When the LDSS *Family Services Specialist* prepares a petition for custody or foster care placement of a child, the petition includes a request that the court enter a child support order at the preliminary removal hearing. The Summons issued by the court notifies the parents that the court will consider child support at the hearing. DCSE's involvement in the initial hearing or a continuation hearing varies from locality to locality.

The LDSS is responsible for reporting to the DCSE all information necessary to aid in securing support on behalf of a foster care child. The *Family Services Specialist* will gather information on each absent parent and record this information on the Absent Parent Deprivation/Paternity Information Form (032-03-0501). A separate form is

required for each parent. The *Family Services Specialist* will forward the completed form to the *Benefit Programs Specialist* for processing and entry into VACIS.

### 1.8.1 Referral to Division of Child Support Enforcement (DCSE)

#### 1.8.1.1 Initial application

Payment of Title IV-E foster care creates a debt to the State of Virginia that is owed by the absent parent(s). The rights to support monies received on behalf of the foster care child are automatically assigned to the State as a refund toward Title IV-E payments paid on behalf of such children.

All Title IV-E cases except those in which deprivation is based on the death of both parents shall be referred to the DCSE unless Good Cause is claimed (see [Section 1.8.1.2](#)).

Currently, for eligibility purposes, Title IV-E foster care cases are recorded on the VACIS automated system. The VACIS system has edits in place that require the *Benefit Programs Specialist* to transfer the information recorded on the Absent Parent Deprivation/Paternity Information Form to the electronic version for the form (also known as the MAPPER 501) before the case can be approved in VACIS. VACIS electronically transmits to DCSE.

- Case openings.
- Case closings.
- Findings of good cause.

#### 1.8.1.2 Initial good cause claims

Good Cause is an exception to the requirement that LDSS cooperate with DCSE to pursue child support on behalf of a foster care child. In cases where the foster care plan has the goal of returning the child to the parent(s) and collection of support will interfere with achieving that goal, the *Family Services Specialist* may claim Good Cause for the parent or parents to whom the child is to return. Claiming Good Cause will result in the case not being pursued by DCSE for collection of support.

Even if Good Cause is claimed, the *Family Services Specialist* is still required to complete the Absent Parent Deprivation/Paternity Information Form (032-03-0501). They will also complete the Good Cause *Communication Form* (032-03-0277-00-eng) on each absent parent and forward to the *Benefit Programs Specialist*.

When Good Cause is found to exist at the time of application, the MAPPER 501 is updated with the good cause status code by the *Benefit Programs Specialist*. The MAPPER 501 information on these cases does not build an APECS (Automated Program to Enforce Child Support) case. The *Benefit Programs Specialist* will forward a hard copy of the Good Cause *Communication Form* to the appropriate DCSE office.

### 1.8.1.3 Ongoing good cause evaluation and status

The Good Cause finding is to be evaluated whenever a change is reported by the *Family Services Specialist* who will advise the *Benefit Programs Specialist* whether the Good Cause finding continues to be appropriate. If a change in the foster care plan has occurred, and the plan is no longer to return the child to the parent(s), the *Family Services Specialist* is to advise *Benefit Programs Specialist*, in writing, that Good Cause no longer exists for that parent.

The *Benefit Programs Specialist* will document in the case record whenever there is a change in the Good Cause status and will notify DCSE electronically by changing the Good Cause status code on the Absent Parent Deprivation/Paternity Information Form (032-03-0501) in MAPPER. The *Benefit Programs Specialist* through VACIS will go into the APECS screen to enter the changes info on MAPPER 501.

If Good Cause no longer exists, APECS automatically updates the information on the APECS Referral Data screen and notifies DCSE staff that the Good Cause status has changed. DCSE takes action to establish and enforce child support prospectively from the date that Good Cause no longer exists.

If a determination changes from a Non-Good Cause finding to a Good Cause finding on an active Title IV-E case, the *Family Services Specialist* will complete the Good Cause *Communication form* (032-03-0277-00-eng) and forward to the *Benefit Programs Specialist*. The *Benefit Programs Specialist* will notify DCSE electronically by changing the good cause status code in MAPPER. DCSE will close the APECS case.

### 1.8.2 DCSE requirements for children ineligible for Title IV-E payment

When a Title IV-E eligible case is no longer eligible for a Title IV-E payment due to a change in status as listed in [Section 1.6](#), DCSE shall be notified manually. The *Benefit Programs Specialist* will complete the Notification to DCSE of Non-Maintenance Title IV-E Case Form (032-03-0356) and forward a hard copy to the appropriate DCSE office.

Additionally, if the child subsequently changes back to Title IV-E eligible, DCSE shall be notified by using the same process as discussed above.

### 1.8.3 Changes that affect DCSE

VACIS electronically transmits case closures to DCSE. Reasons for case closures are listed in [Section 1.10.1](#). Changes in the status of a foster care case or the absent parent's situation are to be reported to DCSE. Some changes will be electronically submitted when changes are made in VACIS or updates are made on the Absent Parent Deprivation/Paternity Information Form (032-03-0501) in MAPPER but some changes may require a manual notification to DCSE. The worker should use appropriate forms and procedures approved by DCSE. Changes and actions for notification may include the following:

- The child leaves foster care.
- Good Cause no longer exists because the service plan goal for the child changes from the goal of return to parents to another goal. Form (032-03-0501) is updated.
- Parental rights are terminated.
- The parent(s) have signed a permanent entrustment agreement.
- The child is emancipated or becomes age 18. VACIS case is closed.
- The whereabouts of the child are unknown.
- Death of the child.
- The child is returned to a parent. VACIS case is closed.

### 1.8.4 Support collections

If support is collected for a foster care child, The Division of Finance, Child Support State Disbursement Unit, will generate a monthly report entitled "State Foster Care Reimbursement". This report is sent to the LDSS and will list support collected on behalf of foster care children in the agency's custody. The local agency should ensure that the *Benefit Programs Specialist* receives a copy of this report.

Child support for the child of a minor foster care child is addressed in [Section 1.11.2](#) with guidance regarding DCSE requirements for child of a foster care child.

## 1.9 Medical care – Medicaid

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The Medical Assistance program (Medicaid) was established under Title XIX of the Federal Social Security Act to enable states to provide medical and health-related services for certain individuals and families with low incomes. The Foster Care and Adoption Assistance Amendments (P.L. 96-272) passed in 1980 created a separate

Title, IV-E, in the Social Security Act to specifically fund foster care and adoption assistance services to children who are Title IV-E eligible. The 1980 law based eligibility on whether or not a child came from a family receiving AFDC or if that child came from a family eligible for AFDC.

The program is financed jointly by the federal and state governments. VDSS works in partnership with the Department of Medical Assistance Services (DMAS), the state agency responsible for the administration of the Medicaid program in Virginia.

### 1.9.1 Medicaid entitlement application

#### 1.9.1.1 Method of application

The *Family Services Specialist* shall complete and forward the [Title IV-E Foster Care and IV-E Medicaid Application](#) (Form # 032-03-0636-04) to the *Benefit Programs Specialist* for all foster care children who entered care through a court ordered removal or entrustment. When received, the *Benefit Programs Specialist* should complete a Medicaid inquiry and notify the *Family Services Specialist* of the child's existing coverage. Title IV-E Medicaid eligibility determination is to be completed within ten days after receipt of all required Medicaid verification of the child's entry into foster care.

For children who enter foster care through Non-custodial Agreements or Parental Agreements, the parent or legal guardian shall complete a separate Medicaid application. The application is submitted to the *Family Services Specialist* who submits the form to the *Benefit Programs Specialist*. Acceptable application forms are listed in the Medicaid manual. Although a separate Medicaid application is required, the eligibility determination process is the same.

#### 1.9.1.2 Timely application

Medicaid Entitlement begins the first day of the month of commitment or entrustment **only if** a Medicaid application is filed within four (4) months of the commitment or entrustment (judicial order or VPA).

#### 1.9.1.3 Late application

If the Medicaid application is filed more than four (4) months after judicial order or VPA, Medicaid entitlement begins the first day of the month the application is received if retroactive coverage is NOT requested. If retroactive coverage is requested, Medicaid entitlement can begin up to three (3) months prior to the month in which the Medicaid application is filed with the Medicaid *Benefit Programs Specialist*.

#### **1.9.1.4 Retroactive entitlement**

If the Medicaid application is filed within four (4) months of a judicial order or VPA, retroactive eligibility exists only if the child met a covered group and all other Medicaid eligibility requirements in the retroactive period.

If the Medicaid application is filed more than four (4) months after judicial order or VPA, retroactive entitlement as a foster care child exists in the three (3) months prior to Medicaid application. Entitlement cannot go back more than three (3) months prior to the Medicaid application month, the month in which the Medicaid application is filed with the Medicaid *Benefit Programs Specialist*.

#### **1.9.2 Medicaid eligibility**

Medicaid eligibility is based on the child meeting criteria in at least one covered group, other non-financial requirements, income requirements, and in some cases resource requirements. Children may meet the definitions for more than one Medicaid covered group.

##### **1.9.2.1 Title IV-E eligible AND receiving a Title IV-E maintenance payment**

- Child meets the Title IV-E foster care covered group.
- Social Security number or proof of SSN application required.
- Enroll child in Medicaid.

##### **1.9.2.2 Title IV-E eligible child is an SSI recipient (receives SSI payment)**

- Child meets the definitions of the SSI covered group.
- Medicaid eligibility in the SSI covered group shall be determined.
  - Shall be U.S. citizen or qualified immigrant.
  - Shall be Virginia resident.
  - SSN shall be provided.
  - Resource requirements shall be met (if SSI recipient owns real property).
  - If child not eligible in SSI covered group, child could be eligible for Medicaid in Title IV-E Foster Care covered group if he or she

receives a Title IV-E foster care maintenance payment instead of SSI.

### 1.9.2.3 Changes that affect Medicaid

Medicaid eligibility is based on the current circumstances of the child. If a Title IV-E eligible child **is not** receiving a Title IV-E maintenance payment, the child does **not** meet the Title IV-E foster care covered group. If the child no longer meets the Title IV-E foster care covered group then a re-evaluation of the child's Medicaid shall be conducted to determine if the child meets another Medicaid covered group. The *Benefit Programs Specialist* shall conduct the evaluation in accordance with the Medicaid Eligibility Manual guidance to determine the child's ongoing eligibility for Medicaid.

A Medicaid recipient's eligibility shall be partially reviewed when the agency becomes aware of any change in the child's circumstances that might affect continued Medicaid eligibility such as:

Changes which require a re-evaluation for Medicaid include:

- Child has run away.
- Child is in an unapproved placement.
- Child is on a trial home visit (Medicaid eligibility as Title IV-E foster care can continue for up to 6 months of the trial home visit. If child remains in the home after 6 months, the child's eligibility shall be determined in another covered group and the parent(s)' & siblings' income will be counted or deemed available).
- Noncompliance with annual judicial review.
- Child is in a placement that does not meet Title IV-E requirements.
- Child has excess income or resources.
- Child has been placed in a home or facility in another state.
- Child is age 19 and no longer Title IV-E eligible but remains in foster care placement.

If child's Title IV-E maintenance payment resumes, the child will again meet the Title IV-E covered group.

### 1.9.3 Annual Medicaid renewals

Annual Medicaid reviews shall be completed at least once every 12 months. The *Benefit Programs Specialist* shall verify that a child is receiving Title IV-E maintenance payments. Medicaid reviews should be completed according to Virginia Medicaid policy manual.

### 1.9.4 Medicaid cancellation

Medicaid entitlement ends when the child fails to meet all of the Medicaid eligibility requirements. Medicaid coverage is canceled on the last day of the month in which the agency determines that the child no longer meets the Medicaid eligibility requirements.

### 1.9.5 Medicaid Notice of Action

A Notice of Action is required for:

- Making a disposition of initial application.
- Changes in Title IV-E eligibility status.
- Determination that the child is no longer eligible for Medicaid, coverage canceled.

If the child entered foster care by way of court order or entrustment, the notice of action is sent to the appropriate *Family Services Specialist* in the LDSS that has custody of the child.

If the child entered foster care by way of a non-custodial agreement, the notice of action is sent to the parents or legal guardian. If the non-custodial foster care agreement should end because the agency is awarded legal custody, future notice of action would be sent the agency *Family Services Specialist*.

## 1.10 Closure of Title IV-E case

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Once initial eligibility is established, the child continues to be eligible while under the care and responsibility of the agency. If the child leaves foster care, the case shall be closed. The *Family Services Specialist* must notify the *Benefit Programs Specialist* immediately in writing that the child is no longer in the care of the LDSS and the date of discharge. The following section identifies some of the reasons for case closure.

### 1.10.1 When to close a Title IV-E case

Close a Title IV-E case when:

- The child no longer meets the age requirement.

- The child entered the LDSS care and responsibility as the result of a VPA and the LDSS has not obtained a custody order with a judicial determination before the 180<sup>th</sup> day of custody to the effect that continued voluntary placement is in the child's best interest.
- LDSS custody has been terminated.
- The child is on a Trial Home Visit (THV) for more than six (6) consecutive months. *In extenuating circumstances, the THV can be extended beyond six (6) months if there is adequate information in a court order justifying a longer period of time.* A court continuance of a hearing regarding the trial home visit does not satisfy this requirement.
- The child is on runaway or absent without leave (AWOL) status for more than six (6) consecutive months.
- A youth committed to DJJ is no longer in the custody of LDSS and *shall* be discharged from foster care. The date of the court order *committing the child to DJJ* will be the discharge date as documented in the Child Welfare Information System.

In situations in which the child's eligibility for Title IV-E ends, the child may continue to receive foster care services as a non-IV-E child and the *Benefit Programs Specialist* will be responsible for managing the Medicaid for children in these situations.

### **1.11 Minor child of foster care child**

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The maintenance payment for a minor child of a foster child who resides with and is in the foster child's custody shall be added to the foster care payment made for the minor child's parent and paid to the foster care provider.

The minor child of a foster child living with his or her parent in a foster home or residential placement is not eligible for TANF. The foster care provider is responsible for providing room and board and ensuring that the payment is used to meet the child's needs.

This provision applies only when legal custody/care of the minor parent's child remains with the minor parent. If the minor child of a foster care child is placed in the custody of the LDSS, the minor child is removed from the parent and a new determination is required. *The minor child would be considered a new case and would be evaluated based on all required Title IV-E eligibility requirements.*

No eligibility determination or application form is required for the minor child *who remains in the custody of a foster child.* The *Family Services Specialist* will notify the

*Benefit Programs Specialist* in writing when a child is born to a foster care child or otherwise commences living with the parent in foster care.

The *Family Services Specialist* should report the addition of the minor child **within ten (10) days** of child's birth or commencing to live with the foster care child. Within 45 days the child shall to be added to the parent's Title IV-E case in VACIS for DCSE purposes using information provided by the *Family Services Specialist*.

Title IV-E eligibility is to be determined separately for the minor child if they also enter foster care, even if the minor child remains in the same foster care placement.

### 1.11.1 Referral of the absent parent to DCSE

The LDSS is responsible for providing information to DCSE concerning an absent parent of the minor child of a foster child.

If the foster care child refuses to provide information on the baby's absent parent, no sanction is applied for failure of the parent to cooperate and it will have no impact on the *child's* eligibility for a maintenance payment or the parent's maintenance payment.

The child of a foster care child shall be reported to DCSE for their financial accounting and reporting.

### 1.11.2 Amount of payment

The maintenance cost of the child of a foster child is added to the foster care maintenance payment made on behalf of the eligible foster child parent. The payment is prorated based on the day of the month the foster care child's child began living in the foster home or residential facility with the minor parent.

**Example:** Foster care child has a baby on April 2, 2010 and baby begins living in the foster home on April 3, 2010 (day released from hospital). On April 3, 2010 is the first day of placement for the foster care child's baby so the payment will be prorated for April beginning April 3, 2010.

For the child residing with their minor parent foster child in a foster family home, the amount of the monthly maintenance payment for the baby/child will be the state's basic maintenance rate for the age of child. The minor child is also eligible for the supplemental clothing allowance according to their age. See *Section 17.1 of the Foster Care manual*.

For the child residing with their minor foster child parent in a children's residential facility, the rate negotiated with the institution is to be allowed as well as the individual requirement allowances (clothing, personal care, recreation or allowance), if not covered in the negotiated rate.

In determining the amount of the child of the minor parent foster child monthly payment, income and resource policies and procedures applicable to the parent also apply to the child:

- Resource limit is \$10,000.
- Income of foster care child's child cannot exceed 185% of the monthly maintenance payment for the foster care child's minor child.

**Note:** Income and resources of the parent and child are to be evaluated separately.

### **1.11.3 Medicaid enrollment**

The child born to a foster child who receives a Title IV-E payment is deemed to be a recipient of Title IV-E. Therefore, no separate Medicaid determination is done.

### **1.11.4 Completion of foster care maintenance evaluation**

A Title IV-E foster care evaluation form is to be completed at the time the child is added to the parent's case. Annual Medicaid evaluation for continued Title IV-E eligibility is completed at the same time the parent is evaluated, indicating that this is a child of the foster child, and identifying any income and/or resources of the child.

### **1.11.5 When not to include the minor child in their parent's (foster care's) case**

- If the LDSS obtains custody for both the minor parent and child, the agency shall open separate cases and establish eligibility determination based on their individual comportment with Title IV-E requirements.
- Minor Parent In Independent Living - The requirement to include a child's maintenance needs in his/her parent's foster care payment does not apply when the parent is in an independent living arrangement. In such situations, the baby's needs may be met through the Temporary Assistance for Needy Families program, if otherwise eligible.