

ECONOMIC ASSISTANCE
IV-E FOSTER CARE ELIGIBILITY

Service Chapter 447-10

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**Foster Care and Subsidized Adoption Eligibility Unit
447-10-03**

(Revised 10/1/2023 ML #3758)

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The Children and Family Services (CFS) section created the Foster Care and Subsidized Adoption Eligibility Unit, referred to as the FCSA Eligibility Unit. The FCSA Eligibility Unit is responsible for creating and updating statewide policy and procedures with an overall goal of standardizing procedures to offer consistency and efficiencies for workers, providers, and families, while reducing financial errors and overpayments for the state. The unit will provide training and technical assistance, as well as collaborate with other Department of Health and Human Services (HHS) sections to best meet the needs of clients statewide.

The unit will manage the

1. Eligibility determinations for foster care cases and authorization of eligible foster care payments.
2. Eligibility determinations for children seeking prevention services, also known as candidates for foster care.
3. Sub-adopt negotiation process and authorization of eligible subsidy payments.
4. Opening and closing of ND Medicaid for all foster and sub-adopt cases.

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Foster Care Eligibility Staff Roles 447-10-04
(NEW 4/23/22 ML #3666)

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The FCSA Eligibility Unit requires planned and coordinated activities between the unit eligibility staff and foster care case managers (Zone, DJS, Tribal). Despite their interrelatedness with foster care cases, there are clearly defined distinction in roles, activities, and responsibilities.

The roles and responsibilities for foster care case managers is in policy chapter 624-05-15-30-20.

The role of the foster care eligibility worker in the FCSA Eligibility Unit is to ensure the foster care case is in compliance with federal and state guidelines for eligibility and reimbursement. The basic functions within the FCSA Eligibility Unit will require the eligibility worker to:

1. Follow the state policy chapters 447-10, Foster Care Eligibility and 623-05, Maintenance,
2. Determine a child's eligibility based on information contained on the documents in the full kit. The full-kit includes the SFN 630-Foster Care Placement Notification, SFN 641-Title IV-E/Title XIX Application-Foster Care, and removal court,
3. Determine financial need is in compliance with AFDC and Medical Assistance standards pursuant to the July 16, 1996, AFDC/FC (IV-E) guidelines (P. L. 104- 193, Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 and the Adoption and Safe Families Act of 1997,
4. Determine a child's Medicaid eligibility based on the financial need and compliance with AFDC and Medical Assistance standards,

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5. Notify the foster care case manager of any required Medicaid documentation needed to engage in medical services,
6. Enter payment and other information in the payment system.
7. Notify the foster care case manager of any required documentation needed to process payments on behalf of a child in a licensed foster care setting,
8. Conduct comprehensive, periodic reviews of eligibility,
9. Ensure the child in foster care meets all the eligibility requirements for ongoing reimbursement,
10. Ensure irregular payment receipts and documentation is in the eligibility file for auditing purposes,
11. Submit the SFN 630-Foster Care Placement Notification and removal court order to Child Support,
12. Ensure all required paperwork is complete when filed, and
13. Ensure file information is submitted timely, when drawn for a file review

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Economic Assistance IV-E Foster Care Eligibility 447-10

Introduction and Intent 447-10-05

(Revised 11/1/10 ML #3249)

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It is the intent of the Department that every effort be made by the social worker/case manager and eligibility staff to secure sufficient information to determine if a child is Title IV-E eligible. It is the responsibility of the case manager to secure all needed information and provide that information to the eligibility worker. When a child is determined "not eligible" for Title IV-E because some of the required information is missing, there may be a greater financial cost to the state and county and a resulting reduction in other needed children's services.

If a parent refuses to provide needed information, the case manager should do all they can including securing a court order compelling the parent to cooperate. If a parent still refuses to provide needed information, consideration should be given to requiring the parent to pay 100% of the cost of care.

An eligibility determination must be completed for ALL children in Foster Care to determine if they are entitled to State or Federal benefits. Each of the criteria that must be considered when making this determination is discussed below. Most of these criteria apply to all children.

NOTE: Information related to foster care and subsidized adoption is confidential. Refer to N.D.C.C. § 50-06-15 and NDDHS chapter 110-01.

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Foster Care Funding Sources 447-10-05-05
(New 4/25/17 ML #3502)

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North Dakota has access to three funding sources that draw on state and federal dollars to reimburse services for a child meeting all foster care eligibility and reimbursability criteria. The funding source is determined through the initial eligibility determination process.

Title IV-E of the Social Security Act

- Are the primary sources of Federal Funds for State Child Welfare Services
- A portion of States' costs are reimbursed
- Title IV-E is an "Uncapped entitlement"
- Any qualifying State expenditure will be partially reimbursed, or "matched," without limit.
- Foster care maintenance costs are reimbursed at Federally determined percentage (which is now at 50%) and the remaining share is funded with 100% state sharing of non-federal funds
- Administrative and training costs can be reimbursed up to 75%
- Tribes have access to IV-E funding ONLY through state and tribal agreements.

Emergency Assistance

- Federal dollars under Temporary Assistance for Needy Families (TANF)
- Foster care maintenance payments are reimbursed at a rate of 75% federal and 25% state
- No additional support is available to the state for administrative or training costs
- Not available to Tribes through state and tribal agreements

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Regular Foster Care

- Foster care maintenance payments are paid at a rate of 100% state funds
- Not available to Tribes through state and tribal agreements

A child that does not meet the eligibility criteria as outlined in policy is not reimbursable through any of the funding sources listed above. Payment for ineligible children would be the responsibility of the custodial agency or family.

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Title IV-E Program 447-10-10
(Revised 5/15/07 ML #3087)

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The TITLE IV-E program, authorized by Title IV, Part E of the Social Security Act, provides funds to states for maintaining certain children in foster care or in adoptive families. It also provides funds for the administration of the program and for the training of staff who work with the children. The IV-E program is not a new program. It replaced the old Title IV-A Foster Care program (AFDC-FC). Children classified as Title IV-E eligible must have some relationship to the general AFDC program authorized under Title IV, Part A (IV-A) of the Social Security Act in place in each state on July 16, 1996, and must meet certain other criteria. This manual defines and explains these criteria.

Assuring that all children who are in the custody of the state are considered for Title IV-E eligibility and certified if determined eligible, is the single most important step a state can take to increase funds available for child welfare. Experience in North Dakota and in other states indicates that identifying and certifying all eligible children for Title IV-E funds can increase the amount of federal dollars available to the state for child welfare programs.

This manual is designed to assist the eligibility specialist in the various tasks necessary to determine whether or not individual children meet the Title IV-E eligibility criteria. If individual children do not meet the Title IV-E eligibility criteria, then eligibility for Emergency Assistance or Regular Match Foster Care payment needs to be examined.

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Emergency Assistance Service 447-10-11
(New 4/25/17 ML #3502)

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Emergency Assistance (EA) is an alternate funding source for children legally removed from a household that exceeds the income/asset limits under the 1996 AFDC guidelines or do not meet the deprivation requirements under Title IV-E. EA is not to be used when a child is Title IV-E eligible. All rules, policies, regulations, guidelines and other criteria pertaining to foster care remain the same.

Emergency Assistance is the provision of out-of-home care and family preservation services (including intensive in-home, parent aide, and case management work) to eligible families with children who are experiencing an emergency.

An emergency exists because:

1. A child is in out-of-home care; or
2. A child is at risk of out-of-home care; or
3. A child is the subject of a child abuse or neglect report; and
4. The emergency did not arise because an adult family member refused (without good cause) employment or training.

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Title IV-E Eligibility 447-10-15
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Title IV-E benefits are an individual entitlement of certain foster care children. For these children, the federal government shares in the costs of maintaining the child. In addition it pays the state for the staff and administrative costs which are incurred when working with the child, the child's family, and the care provider. Finally the state receives 75% of the costs of training staff who work with Title IV-E eligible children, the child or who administer the foster care system for the child. There are two major categories of Title IV-E status: Eligibility and Reimbursability.

The IV-E eligibility and reimbursability are determined on a one-time basis when the child enters foster care. Title IV-E eligibility does not automatically confer federal benefits. The reimbursability criteria must be met for the state to receive federal support for the child. Once established, a child's eligibility and reimbursability will continue as long as the court order that sanctioned the child's removal from the home remains in effect. **There is only one instance when a child in continuous care would lose eligibility for Title IV-E:**

- When the youth reaches the age limit for the program.

An assessment of several Title IV-E criteria is required to determine whether the child is federally reimbursable. The child must be eligible to be reimbursable. The following discussion reviews all of the criteria, which make up the concepts of eligibility and reimbursability.

For foster care reimbursement, the child must be placed in a licensed (not provisional) or approved affidavit foster home/facility. Foster family homes/facilities that are approved must be held to the same standards as foster family homes that are licensed. Anything other than full licensure or

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approved affidavit is insufficient for meeting foster care eligibility requirements. (CFR 1355.20, effective March 27, 2000)

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**Foster Care Eligibility Quality Assurance Reviews
447-10-18**

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All foster care eligibility files are managed and maintained by the Children and Family Services Foster Care and Sub Adopt (FCSA) Eligibility Unit. The FCSA Eligibility Unit files are subject to initial and ongoing quality assurance in the phases detailed below to ensure accurate eligibility determination and proper payments.

Quality Assurance Phases

1. Phase 1: Initial Eligibility Determination
 - a. An initial review of information submitted to the unit to ensure documents for eligibility determination are complete prior to assigning the case.
 - b. Probationary Employees: Secondary oversight and review by a unit lead worker will be completed on 100% of the initial eligibility determinations. This will ensure eligibility was determined accurately by the assigned worker.
 - c. Non-Probationary Employees: Secondary oversight and review by a unit lead worker will be completed on a minimum of two newly determined eligibility cases per month. The cases reviewed will be at the discretion of the lead worker. This will ongoing accuracy in policy application by the assigned worker.
 - d. Eligibility determination errors will be corrected by the assigned eligibility worker within 7 working days following the identification. If select unit staff continue to have case files with identified errors, additional training and support will be provided by the lead worker and tracked as part of each employee annual

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performance evaluation. Unit staff with more than 2 errors effecting an eligibility outcome in three consecutive months, will be placed on a three-month FCSA Eligibility Unit defined probationary period.

2. Phase 2: Monthly Payment Review

- a. A unit lead worker will review the previous month's foster care payment report in the first week of the following month to identify inconsistencies and possible errors in payment. Findings will be tracked on the foster care payment report.
- b. A unit lead worker will monitor 100% of the overpayments to ensure balances are repaid timely. Findings will be tracked on the overpayment report.
- c. Payment errors will be corrected by the assigned eligibility worker within 7 working days following the identification. If select unit staff continue to have case files with identified errors, additional training and support will be provided by the lead worker and tracked as part of each employee annual performance evaluation.

3. Phase 3: Biannual (twice per year) Peer File Review

- a. A peer eligibility file review will be completed biannually (twice per year) to include a random stratified sample of foster care eligibility cases quarterly.
- b. The department has defined a methodology to include a file sample of all public agencies (Zones, Tribal Nation or DJS) and all match codes will be pulled into the sample to ensure a comprehensive understanding. The methodology will provide a diverse sample of cases to identify issues or barriers impacting foster care eligibility. The case draw methodology will remain on file with Decision Support Services is maintained by the department's data analyst and can be made available upon

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request.

- c. Any identified error will be corrected by the assigned eligibility worker within one month following the file review. If select unit staff continue to have case files with identified errors, additional training and support will be provided by the lead worker and tracked as part of each employee performance evaluation.

Monitoring Custodial Agency Risk

The FCSA Eligibility Unit will conduct ongoing tracking of custodial agency (Zone, DJS, Tribe) overpayments monthly. Each month in which an overpayment is identified, the agency director will receive notice from the FCSA Eligibility Unit. If overpayment satisfaction exceeds 90 days, the agency will be required to refund payments that the Department cannot remedy through auto-recoupment or direct recoupment from the provider.

If an agency creates more than five foster care overpayments in a quarter, the agency director will receive a written notice from the FCSA Eligibility Unit supervisor. The agency will be required to submit a corrective action plan detailing how they plan to reduce overpayments. Part of the corrective action will require each agency to review policy, document what day the training was held and identify which staff participated. The corrective action plan must be submitted to the FCSA Eligibility Unit within 30 days of receipt from the unit.

If the custodial agency continues to be out of compliance for three consecutive months following corrective action plan submission, the FCSA Eligibility Unit will notify the NDDHS Executive Office to determine next steps.

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Initial Eligibility 447-10-20
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North Dakota's foster care program is a state supervised and county administered child welfare system. Children and Family Services Foster Care and Subsidized Adoption (FCSA) Eligibility Unit is responsible for determining foster care eligibility based on the federal and state law, rule, and policy.

1. The child would have met the AFDC eligibility requirement in the eligibility month (Effective July 1, 1997, wherever AFDC is mentioned here, it relates to the eligibility rules as of July 16, 1996, pursuant to P.L. 104-193.)

Foster care eligibility requires the FCSA Eligibility Unit to first determine:

1. If the child is eligible for Title IV E.
2. If the child is not IV-E eligible, determine if the child is eligible for Emergency Assistance.
3. If the child is not eligible for Emergency Assistance, determine if the child is eligible for Regular Foster Care.

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Eligibility Month 447-10-20-05
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The eligibility month is the month during which the petition for the care of the child, which eventually led to a court ordered removal of the child, is filed. It is important to note that the date the child enters foster care does not necessarily define the eligibility month.

The date a child was removed as the result of a court order may be different from the date of the actual petition by days, weeks, or even months. Here again it is the date of the petition, not the removal, which defines the eligibility month. If no petition was filed, then the date of the emergency or temporary removal order will be used to determine the eligibility month.

Occasionally a petition is filed which results in an order granting the Human Service Zone, Division of Juvenile Services (DJS), or Tribal Nation custody of the child, but allows the child to remain in his/her own home. If, at a later time, the custodian wants to remove the child from the home, a second order must be obtained which contains the determination that "continuation in the home is contrary to the best interest of the child." The eligibility month becomes the month that the petition or motion was filed which resulted in the second order that authorized the child's removal from the home. It is important to note, *each time a child is removed from the home, an order must be obtained that contains the required Title IV-E judicial determination regardless of whether the agency retained legal custody while the child was in the home.

Except for a Trial Home Visit: A trial home visit must be a planned, formalized, agency-supervised visit in the reunification home for a specified period of time not to exceed six months, unless otherwise authorized by the court. A trial home visit must be discussed at permanency planning and entered into a child's case plan, and no foster care payments are made during the visit period. Casual or incidental visits, e.g., to attend a wedding

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or funeral, are not considered "trial home visits" even if they are part of the child's reunification plan.

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Legal Status 447-10-20-10
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Applies to all children in foster care.

Initial foster care eligibility determination requires a court order* from a court of competent jurisdiction signed by a Judge, Tribal Judge, Juvenile Referee or Magistrate which contains:

- The legal removal of a child from the home.
- A judicial finding that continuation in the home is contrary to the welfare of the child or removal is in the best interest of the child (initial order).*
- A judicial finding of reasonable efforts to prevent removal (within 60 days of removal).*
- A transfer of care and responsibility for a child to a Human Service Zone, Tribal Nation of which North Dakota Department of Health and Human Services has an agreement, or the Division of Juvenile Services.
- Authorization for the custodial agency to place the child out of the home.

An emergency removal order issued by a juvenile court officer or juvenile court director allows for the removal of the child but requires a detention or shelter care hearing within 96 hours. Juvenile Court Officers and Juvenile Court Directors are not authorized to make judicial findings of "contrary to the welfare" and "reasonable efforts", but do have the authority to remove a child until further hearing by the court.

- * Documentation of Judicial Determinations: If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders, a transcript of the court proceedings is the only other documentation accepted to verify that these required determinations have been made. Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of the required reasonable efforts and

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contrary to the welfare judicial determinations.

Removal of a child from the child's home for placement in foster care must be based on judicial findings stated in the court's order, and determined on a case-by-case basis in a manner that complies with the requirements of Titles IV-B and IV-E of the Social Security Act [42 U.S.C. 620, et seq., and 42 U.S.C. 6701, et seq.], as amended, and federal regulations adopted thereunder.

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AFDC Relatedness 447-10-20-15
(Revised 5/15/07 ML #3087)
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Applies to Title IV-E benefits only.

In the eligibility month the child must have had a relatedness to the Aid to Families with Dependent Children Program authorized under Title IV, Part A of the Social Security Act.

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AFDC Relatedness Test 447-10-20-15-05
(Revised 4/23/22 ML #3666)

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Applies to Title IV-E benefits only.

A child meets the AFDC relatedness test if one of the following conditions is met:

- The child would have been eligible for AFDC based on July 16, 1996 rules; or
- The child did not live with the AFDC specified relative in the eligibility month*, but did live with the specified relative in any of the preceding six months and would have received AFDC in the eligibility month if he/she had been living with the specified relative and an application had been made.

* based on July 16, 1996 rules.

Both tests require that you look at the home from which the child was legally removed. The removal home for IV-E eligibility determination is the household of the person(s) from whom custody of the child was judicially taken or voluntarily given to the State.

To be IV-E eligible, a child must have lived with a parent or other specified relative at some point in the preceding six months of the month of the initiation of court proceedings to remove the child. The "living with" and "removal from" requirements have to be satisfied by the same specified relative. If a child lived with no relative during this period, the child is not IV-E eligible during the entire episode of foster care.

The second test requires reconstruction of the child's situation in the eligibility month to determine whether AFDC eligibility was possible. In

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essence, the tests measure the same set of categorical circumstances in which the child found himself. In the first test those circumstances were actually documented; in the second, the agency must attempt to determine retrospectively whether those circumstances existed.

To determine the preceding period to be considered, first identify the date on which the petition to remove the child was filed. (Note that this may differ from the "clocked" petition date.) In the event that no petition was submitted, use the date of the earliest court order, which removes the child. Beginning with the month preceding this date, count back six months. The period begins on the first day of that six-month period and ends on the petition date.

Three circumstances which define AFDC eligibility (or hypothetical AFDC eligibility) are the following for Title IV-E purposes:

1. Living with a Specified Relative

During the month(s) under consideration, the child must have lived with a specified relative. A specified relative is defined as:

- a. Any relation by blood (including half-blood), marriage, or adoption who is within the fifth degree of kinship to the dependent child.

The caretaker relative must therefore be a parent (1st degree), grandparent (2nd degree), sibling (2nd degree), great-grandparent (3rd degree), uncle or aunt (3rd degree), nephew or niece (3rd degree), great-great grandparent (4th degree), great-uncle or aunt (4th degree), first cousin (4th degree), great-great-great grandparent (5th degree), great-great uncle or aunt (5th degree), or a first cousin once removed (5th degree).

- b. Stepfather, stepmother, stepbrother, and stepsister.
- c. Persons who legally adopt a child, as well as the natural and other legally adopted children of such persons; or
- d. Spouses of any persons named in the above groups even after the marriage is terminated by death or divorce.

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A child is considered to have been "living with" a parent or other specified relative if the child resided with that person for at least one night in any household during the period under consideration. In the absence of evidence to the contrary, the intent to live with the person should be assumed.

EXAMPLE A:

The petition is filed for placement of a child on July 31, 2004, and the child went into foster care on that day. The period to be considered for the "living with" requirement is January 1, 2004, through July 31, 2004. The child lived with friends for the month of January, returned to the parental home in February, and then a run away shelter until the child's placement in foster care. Since the child resided with the specified relative within six months of the petition to the court that led to the removal, the child may be IV-E eligible, assuming other IV-E conditions are met.

EXAMPLE B:

The petition is filed for placement of a child on July 31, 2004, and the child went into foster care on that day. The period to be considered for the "living with" requirement is January 1, 2004, through July 31, 2004. The child lived in a runaway shelter continuously from December 25, 2003, through July 31, 2004. This child is not IV-E eligible during the entire foster care episode, which commenced July 31, 1999.

EXAMPLE C:

A child lives with a related caretaker who is not the child's legal guardian for seven months before the caretaker contacted the agency to remove the child from his/her home. The agency petitions the court and the court removes custody from the parents and the agency physically removes the child from the home of the related caretaker. The child is ineligible for IV-E foster care since he or she had not lived with a specified

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relative who is the child's legal guardian within six months of the agency's petition to the court.

Removal home:

Once the "living with" requirement is established, the next step is to determine the removal home to be used in the deprivation and resource test for AFDC relatedness. The applicable court order(s) are critical for determining the removal home, it is the legal home of removal which is the focus of the IV-E eligibility determination. All of the signed court orders pertaining to each case must be in the case file.

Federal regulations effective March 27, 2000, revised the requirements of a "removal home" to include a provision for "constructive removal," defined to include all of the following:

- Non-physical removal of the child.
- The child continues to live with a relative or non-relative caretaker.
- The child lived with a parent or other "specified relative" within the preceding six months.
- The legal custody of the child was removed from a parent or other "specified relative."

"Removal" previously meant strictly a physical removal from the home of a specified relative. The new federal regulations effective March 27, 2000, added the concept of "constructive removal," which is a non-physical removal and applies to situations where a child is living with a relative or non-relative caretaker but has lived with a parent or other specified relative who is the child's caretaker within the last six months, and legal custody is removed from the parent/guardian and the child continues to reside with the caretaker.

For example, child was living with mother. Mother left child with grandmother – mother failed to return. Court removed custody from mother and gave care, custody, and control to county social services. Court order had all requisite foster care findings and all

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other IV-E requirements were met. Grandmother was licensed to provide foster care. This is a IV-E eligible situation. It is considered a constructive removal.

Federal Regulations provide (1356.21):

A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the State agency.

A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties.

Refer to the following chart entitled "Home of Removal" together with sample cases "Six Case Examples – Is this Constructive Removal" to help identify case situations which can be claimed as "constructive removals." Please refer your questions to the regional supervisor at your human service center, or Children and Family Services Division.

HOME OF REMOVAL

Child		Title IV-E Old Federal Regs	Federal Regs 3/27/ 00	Capitol Case*
1	Lives in Court Ordered Removal Home Example: Case #1	N	N	--

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2	Lived with no relative prior 6 months Example: Case #2	N	N	--
3	Physical removal from eligible Court Ordered Removal Home Example: Case #3	E	E	--
4	Not physically removed by Court Order Lived with Eligible Court Ordered Removal Home within 6 months "Constructive Removal" Example: Case #4	N	E	E
5	Not physically removed by Court Order Lived with Eligible Court Ordered Removal Home over 6 months ago Example: Case #5	N	N	E
6	Not physically removed by Court Order Lives with relative over 6 months Court Ordered Removal Home not eligible Example: Case #6	N	N	

* Capitola Case: Land v. Anderson case re: "constructive removal" – appeal pending.

Six Case Examples – Is This Constructive Removal?

Case #1: Child has been legally removed from parent's custody into agency custody, with the stipulation that the child may reside in the parent's home under agency supervision until the agency decides otherwise. In other words, the child is still at home after the court ordered "legal" removal. This child was not IV-E eligible under the old rules and is not IV-E eligible under the new rules. **If child needs to enter foster care, a new court ordered removal with**

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all requisite foster care language is required. This applies to any child.

Case #2: Child lived with no relative during the six months prior to the petition or court order month. Under both old and new federal rules, this case is not IV-E eligible since it does not meet the AFDC requirement of living with a specified relative in the six months preceding application.

Case #3: Child is physically removed from parent's or other relative's home by court order. The removal home was AFDC eligible (or would have been eligible) in the removal month. Case is Title IV-E eligible under both old and new regulations.

Case #4: Child was legally removed by court order from an AFDC eligible home, in which the child was not residing in the petition/court order month, but in which the child lived within the six months preceding that month. The child would not have been eligible under the old federal regulations because there was no physical removal. Under the new federal regulations, the case is Title IV-E eligible, as the new regulations consider this a "constructive" removal.

Case #5: This is the Capitola Land case. The court legally removed the child from an AFDC eligible home which the child had left more than six months previously. At the time of court action, the child was residing in another relative's AFDC eligible home. Under the old regulations this was not Title IV-E because there was no physical removal pursuant to the court order. The new regulations say this is not Title IV-E eligible because the child did not live with the AFDC eligible relative during the six months prior to the petition/court order month. The Land v. Anderson decision holds this case to be Title IV-E eligible. The Land v. Anderson decision of the California Supreme Court is under appeal in the federal Ninth Circuit Court.

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Case #6: In this situation, the removal home was not AFDC eligible, but the current home where the child resides is AFDC eligible. This child is not Title IV-E eligible under the old rule (no physical removal) and not Title IV-E eligible under the new rule (constructive removal home was not Title IV-E eligible).

NOTE: In any case eligible for foster care, the court order must have all requisite foster care elements.

2. Deprivation

The AFDC deprivation factor means that the child has been deprived of the support of one or both parents as the result of:

- a. Death of a parent
- b. Continued absence of parent:
 - i. Separation or Divorce
 - ii. Imprisonment
 - iii. Unmarried Parenthood
 - iv. Desertion/Abandonment.

Absence due solely to active duty in the armed forces, employment, school, or training is not deprivation. Also, if a parent is expected to return home within 30 days, deprivation is not present.

- c. Physical or mental incapacity of a parent. The incapacity must last at least 30 days and must reduce the person's ability to work or provide care for a child and must be documented in the case record.

Incapacitation may be demonstrated by any one of the following:

- i. A visually observable incapacity documented by the caseworker.

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- ii. A medical report from a physician indicating that the incapacity will exist for at least 30 days and impairs ability to work or care for the child.
- iii. A parent's receipt of SSI for disability or blindness, or recognition of disability or blindness by the Veteran's Administration or Social Security Administration.
- d. Unemployment or underemployment of the principal wage earner.

A child living with both parents is deprived of parental support if the principal wage earner is unemployed or underemployed and meets requirements listed below.

Principal Wage Earner:

A primary wage earner must be established when both the biological or adoptive parents reside in the same household before it can be determined if the deprivation of unemployed or underemployed applies.

The primary wage earner is defined as the parent who earned the greater amount in the 24 month period prior to the eligibility month. This parent remains the principal wage earner for as long as the child is in custody during the current custody episode.

If both parents earned an identical amount of income (or earned no income) in such 24-month period, the agency shall designate which parent shall be the principal earner.

Unemployed or Underemployed of the Principal Wage Earner.

A child is considered to have a deprivation of unemployed/underemployed parent when the established primary wage earner (PWE) is:

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1. Unemployed in the eligibility month and unemployed in the month prior to the eligibility month or
2. Underemployed due to intermittent work. Intermittent work is defined as the PWE is employed in the eligibility month, but worked less than 100 hours in each of the two months prior to the eligibility month.

The number of employment hours include reported hours worked and any hours claimed as holiday and sick pay hours; or if self-employed, in the absence of credible information, by dividing the gross monthly income by minimum wage.

The household income cannot exceed the 185% Standards and Net Income (Need) standard for the household size.

When the only means of income to a household is self-employment and both parents are actively involved in the business, consider both parents working more than 100 hours.

If the parent is on paid leave from an employer (such as sick or vacation leave), the parent is not considered to be unemployed or working less than 100 hours. Any paid hours count as employed hours.

AFDC GROUP

The AFDC group (filing unit/household composition) for initial IV-E eligibility determination is the grouping of persons from the removal home whose income and assets are considered in determining financial need.

1. If the child's parent was the caretaker relative from whom custody was judicially taken or voluntarily given to the State, the AFDC group includes:
 - a. The child;
 - b. Biological or adoptive parents; and

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- c. Biological, adoptive, and half-siblings of the foster child who meet the definition of dependent child and who live in the same household.
2. If the caretaker relative from whom custody was judicially taken or voluntarily given to the State was not the child's parent, the AFDC group includes:
 - a. The child; and
 - b. Any biological, adoptive, and half-siblings of the foster child who meet the definition of dependent child, and who live in the same household.
3. Any household member receiving SSI benefits is not counted as a member of the AFDC group, unless the household member is the foster child. In addition, the SSI benefits and any other income or assets of the SSI recipient are not counted in determining financial need. (The foster child is counted as a member of the AFDC group, even if the child has SSI. The child's income and assets are excluded.)
4. A stepparent is not counted as a member of the child's AFDC Group, but is a member of the stepparent's AFDC group. The stepparent's AFDC group is utilized in deeming the stepparent's income.
5. A child receiving adoption assistance, other than the foster child, may be excluded from the AFDC group. (The child's income and assets are not counted if excluded from the AFDC group.) If the adoption assistance recipient is the foster child, do not count the child's income and assets when determining eligibility; however, count the child as a member of the AFDC group.

The following must be considered in order to determine need:

- a. Asset Limit and Definition

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Countable assets of the AFDC group may not exceed \$10,000 during the eligibility month. Assets are defined as a "resource that a person possesses or owns." Assets must be available, which means that a member of the AFDC group owns it or has the legal right to sell it or dispose of it for the individual's own benefit. An asset is determined by its equity value, which is the current market value minus any debts still owing on the asset.

Countable Assets

Countable assets may include:

- Real property including land, houses, buildings, and trailer homes.
- Liquid assets, such as savings and checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, cash value of insurance policies, trust funds, and agreements in escrow.
- All motor vehicles, such as cars, trucks, motorbikes, motorcycles, snowmobiles, boats, campers, and trailers.
- Instruments and tools.
- Livestock.
- Merchandise and inventory.
- Time-shares and time-share agreements.
- Certain aliens who have been legally admitted in the United States for permanent residence must have assets of their sponsors counted when determining eligibility for AFDC. Contact the Title IV-E/Medicaid Trainer for more details when a sponsor is involved.

Asset Exclusions

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Exclude the following from countable assets:

- Home, its contents and surrounding property.
- Equity value of up to \$1,500 of one car or other motor vehicle. Count any value in excess of this amount towards the \$10,000.00 asset limitations.
- The equity value of a vehicle is its fair market value minus the amount owed on it. The fair market value is the average trade-in value listed in the most current Used Car Guide Book put out by the National Automobile Dealers Association (NADA). Do not add or deduct values for optional equipment or mileage. If the vehicle is not listed in the Used Care Guide Book, contact a dealer for an estimate of value.
- Per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe.
- Irrevocable burial trusts. Exempt the value of an irrevocable burial trust fund such as a pre-arranged funeral plan. Exempt one burial space and any item related to repositories used for the remains of the deceased for any member of the household. This includes caskets, concrete vaults, crypts, urns, and grave markers. In addition, if a recipient owns a gravesite, the value of which includes the opening and closing, the value of these services is also excluded.
- Allow a \$1,500 burial/funeral fund exemption for each eligible AFDC group member, subtracting the value of any irrevocable burial trust from the \$1,500 burial/funeral fund exemption.
- Real property, if a household is making a bona fide effort to sell real property during the month of removal.
- Income producing personal property necessary for employment.
- Educational assistance.
- Loans, including reverse equity loans endorsed in writing for repayment.

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- Lump sum insurance payments for lost, stolen, or damaged property if the available money is used to replace the lost, stolen, or damaged property, and the property was exempt at the time of loss.

Availability of Assets

Count only assets that are available to the AFDC group. Assets are available when an individual legally owns the asset and has possession of the asset.

Joint Accounts

When a person in the AFDC group and someone who is not in the AFDC group jointly owns a bank account, count all of the funds as an asset for the person in the AFDC group if the AFDC group member can legally withdraw the funds from the account.

If one account holder is in the AFDC group and another account holder is not in the AFDC group but is in an FEP assistance household, divide the funds equally between the two households.

If the person claims that the asset does not belong to him/her, allow the individual to refute ownership.

Document why the joint account was set up and who made the deposits and withdrawals from the account.

Joint Ownership of Assets

If more than one person owns property, determine the share that belongs to the person(s) in the AFDC group. Unless there is a condition of ownership specifically

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prohibiting the sale of any part of the asset without permission of all owners, the share that belongs to the person in the AFDC group is counted as an available asset.

When Legal Factors Hinder the Availability of an Asset

When determining if an AFDC group meets the asset limit during the eligibility month, if legal factors hinder making the asset available, the asset is exempt. For example, a condition of ownership may prohibit selling the asset without the consent of both parties. In this case, the asset is exempt because legal factors hinder making the asset available.

If the cost of making the asset available exceeds its value, efforts do not have to be made to make the asset available.

3. Income

Income eligibility determination is based upon the best estimate of income, AFDC group size, and child care costs during the eligibility month, based upon available information. Past income and consideration of changes during the eligibility month should be taken into account when determining AFDC group income. Information needs to be verified. A parent's signed statement of income meets the verification requirement.

Use the household and worker's reasonable expectations and knowledge of the circumstances during the eligibility month when determining income. Document the AFDC group's earned and unearned income clearly in the case record.

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Income and resources are considered available both when accessible and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.

To assess whether money held in a trust fund or pooled fund account must be counted in the AFDC determination, the title IV-E agency must assess whether the funds are available to the AFDC assistance unit in or for the month in which the court proceeding to remove the child is initiated.

The following three examples are based on an AFDC eligibility determination that is made in or for the month in which the court proceeding to remove the child is initiated:

- If funds are held in such account as a trust fund or pooled fund account and the funds are not available to the AFDC family unit to use for the child's (or another individual in the AFDC family unit's) support and maintenance, then the funds are not counted as income or as resources when making an AFDC eligibility determination.
- If some or all of the funds are considered available to the child, the amount of the funds that are available will be counted as income for the month in which the funds become available for purposes of an AFDC eligibility determination.
- To the extent that funds remain available in the subsequent month, the remaining amount would be considered as a resource until the entire amount disbursed has been exhausted in accordance with AFDC policy. For example, if the child was removed during the month after the month in which the AFDC family unit received the lump sum income from the trust, the remaining amount would be considered a resource during the month in which the child was removed.

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For Tribal Nations, People's Fund disbursements are considered unearned income when received in the foster care eligibility month or distributed prior to the time of the child's entry into a foster care placement. Disbursements received in the months prior to and after the date of the child's legal removal from the home are not subject to proration or considered unearned income in the eligibility month. Any disbursement amount that is retained and is available to the AFDC Unit in the eligibility month is considered an asset for eligibility purposes.

Income Tests

The AFDC group must pass two income tests for the eligibility month for the initial IV-E eligibility determination.

First Test = 185% Income Test

The AFDC group's countable gross income must not exceed 185% of the AFDC Need Standard. Gross countable income is total income, earned and unearned, the AFDC group received during the eligibility month plus any deemed stepparent income. Do not count excluded earned and unearned income. If the gross income is less than or equal to 185% of the AFDC Need Standard, proceed to the second income test. **If the gross income is more than 185% of the AFDC Need Standard, the foster child is not IV-E eligible.**

Second Test = 100% Income Test

The AFDC group's countable gross income minus allowable deductions must not exceed 100% of the AFDC Need Standard. This is determined by subtracting allowable deductions from countable earned income (not less than zero), and adding this adjusted earned income to the countable unearned income and any deemed stepparent income. Allowable deductions from earned income include:

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a. Work Allowance

Subtract \$90.00 work expense allowance from each employed person's earnings in the household.

b. Day Care

Subtract the monthly cost of day care from the earned income of the member of the AFDC group paying the expense if: (1) the day care expense is for a child or an adult member of the AFDC group, and (2) the day care expense is paid to a person not included in the AFDC group. The day care expense may be deducted up to the limits as specified below:

Child Under Age 2	\$200 per person/month
Age 2 or Over	\$175 per person/month

If the net income is less than the AFDC Need Standard, the household meets the income criteria for AFDC eligibility. **If the net income is EQUAL to OR GREATER than the AFDC Need Standard, the household does not meet the income criteria for AFDC eligibility and the foster child is not IV-E eligible.**

Deeming Stepparent Income

If a stepparent lives in the household, the stepparent's gross income must be "deemed" to the foster child. Deeming means determining the amount of the stepparent's income to be included in the total gross income available to the foster child. To determine the deemed amount:

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Determine the stepparent's gross income (earned and unearned).

Determine the AFDC group size for the stepparent. The AFDC group size consists of the stepparent and any of the stepparent's biological or adoptive children who meet the dependent child criteria (living in the home, or out of the home and not receiving child support) who are not a child in common with the other spouse in the household. (The stepparent will not be counted in the AFDC group for the foster child.)

Subtract \$90 earned income work deduction if the stepparent is working.

Subtract the 100% AFDC Need Standard amount for the stepparent's AFDC group size.

Subtract any child support/alimony the stepparent is paying.

The remaining income is the income to be deemed (added) to the child's available income. (For the 100% income test, do not deduct the \$90 earned income work deduction again.)

Lump Sum Payments as Income

Lump sum payments, such as Social Security lump sums and severance pay, are income and can be earned or unearned. Costs of legal fees expended to make the lump sum available, payments for past medical bills, and funeral or burial expenses (if the lump sum was intended to cover funeral or burial expenses) are subtracted from the lump sum before determining income eligibility.

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Counting Lump Sum Payments for Initial Eligibility

A lump sum received during the eligibility month is counted as income in the month received. If the lump sum belongs to the foster child and has not been fully spent during the eligibility month, any remaining portion is an asset.

A lump sum received prior to the eligibility month is not countable as income. Any remaining portion of the lump sum left during the eligibility month is an asset.

Do not count any lump sum payments received by an SSI recipient as either income or assets when determining if a household meets AFDC criteria.

Unearned Income

1. Countable Unearned Income

Unearned income is income received by an individual for which no service is performed. Countable unearned income includes, but is not limited to, the following:

Pensions and annuities such as Railroad Retirement, Social Security, Veterans Administration, and Civil Service payments.

Disability benefits such as industrial compensation, sick pay or worker's compensation, mortgage insurance, and paycheck insurance.

Unemployment compensation.

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Strike or union benefits.

VA allotments and GI Bill.

Child support (after \$50 deduction per household) and alimony. Child support and alimony payments belong to the person for whom they are intended, not the person who may be receiving payments on behalf of the individual.

Money from churches, charitable organizations, lodges, unions, friends, or relatives (except as noted under exemptions for gifts, below).

Interest and dividend payments from stocks, bonds, savings, and insurance.

Trusts, inheritances, personal injury settlements, and life insurance benefits.

Tribal fund gratuities.

JTPA needs based payments and supported service payments that are not reimbursements.

Money from sales contracts and mortgages.

Rental income, if another individual or company manages the rental property for the owner. (In these cases, the owner collects money from the manager.)

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Unearned Income Exclusions

The following types of unearned income are not counted for AFDC purposes:

Foster care payments, adoption assistance payments, or cost of care payments for a child in State custody.

All unearned in-kind income.

Income of an SSI recipient. (Do not count SSI income or any other income received by an SSI recipient.)

The first \$50.00 of current child support payments collected each month.

JTPA unearned income of a dependent child.

Travel and training allowances and reimbursement.

Educational assistance and college work study, with the exception of Veterans Educational Assistance intended for family members of the student.

Loans, including reverse equity loans, endorsed in writing for payment.

Cash gifts of up to \$30 per household member received in any one quarter. (Count the amount exceeding the \$30 limit.)

Cash to pay for shared living expenses received from a person living in the removal home who is not a member of the AFDC group.

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Income tax refunds and Earned Income Tax Credit (EITC) payments.

Payments for home energy assistance, rental subsidies, and relocation assistance.

Food programs such as Food Stamps, WIC, USDA surplus food, home delivered meals, or school lunch.

Special payments made by law, including:

Payments or reimbursements made to volunteers under the Retired Senior Volunteers Program, Green Thumb, Foster Grandparent Program, VISTA volunteers, Senior Health Aides, SCORE, Senior Companion Program, and ACE.

Payments to Japanese and Aleut people who were relocated during wartime.

Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation.

Payments made from the Radiation Exposure Compensation Act.

Payments under the Disaster Relief and Emergency Assistance Amendments of 1988.

Certain Native American Payments

Income accrues too many Indians from leasing real property held in trust by the federal government. Such income includes

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payments from range unit leasing, farm leases, gravel pit contract sales, etc. Lease payments are usually deposited in and disbursed through Individual Indian Monies (IIM) Accounts, maintained by the Bureau of Indian Affairs, although they are sometimes made directly to the applicant/recipient by the lessee. Please note that the Omnibus Budget Reconciliation Act of 1993 provides that up to \$2,000 per year of income received by the individual Indians (IIM's) which is derived from leases or other uses of individually owned trust or restricted lands shall not be counted as income.

Eligibility staff must verify Individual Indian Monies (IIM) Accounts in order to determine the yearly amount and source of income deposited for exclusion purposes. Although other forms of verification are acceptable, county social service boards can best obtain information about deposits to IIM Accounts for each member of the assistance unit by use of SFN 42/413, "Individual Indian Monies Account."

Under P.L. 93-134, enacted October 19, 1973, judgment funds distributed after that date to members of Indian tribes are to be disregarded as income or assets. To remain exempt, however, per capita funds must be kept separate and apart from countable assets. Otherwise it is not possible to differentiate between funds that are exempt and funds that are not. Commingling of funds renders the entire account nonexempt.

Any proceeds from tribal gaming/gambling establishments distributed to enrolled tribal members (residing on or off the reservation) must be considered unearned income.

Earned Income

Countable Earned Income

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Earned income is income in cash or in-kind for which a person performs a service. Sources of earned income include, but are not limited to:

Wages, salaries, bonuses, commissions, and tips, including JTPA wages of a child other than the foster child, Job Corps payments, Americorps living allowances and deemed income of a stepparent.

Sick pay and temporary disability insurance or temporary workers compensation payments, which are employer funded.

Severance pay, including the cash-out of vacation pay and sick pay.

Rental income, only if the owner to receive the income performs managerial duties.

Monies from self-employment, including earnings over a period of time for which settlement is made at one given time, such as farm crops, livestock, and poultry.

Training incentive payments and work allowances.

Benefits received by a household member as a reward for service, such as free shelter, vendor payments, or any additional allowances given for shelter to a member of the armed forces.

Certain aliens who have been legally admitted in the United States for permanent residence must have income of their sponsors counted when determining eligibility for AFDC. Contact the Title IV-E/Medicaid Trainer for more details when a sponsor is involved.

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Earned Income Exclusions

Incentive and training expenses paid under a client's plan with the Department of Workforce Services.

Reimbursements from an employer for any work expense or allowances from an employer for travel and training.

Earned Income Tax Credit (EITC) payments received as part of the regular paycheck or received as a lump sum along with the household's income tax refund.

Income paid by the U.S. Census Bureau to temporary census takers.

JTPA earned income of a dependent child.

A child's earned income who is a full-time student.

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Concurrent Eligibility for Both Title IV-E and Supplemental Security Income (SSI) 447-10-20-20 (Revised 10/1/2023 ML #3758)

[View Archives](#)

It is allowable for the same child to be simultaneously eligible for both Supplemental Security Income (SSI) and Title IV-E Foster Care or Adoption Assistance (ACYF-PA-94-02). Dual SSI/IV-E eligibility is common and very significant to federal support for foster care and subsidized adoptions. SSI is a means-tested program for the elderly and disabled, including children with mental and physical disabilities, whether in foster care or not. Title IV-E is a means-tested program for children in foster and adoptive placements. Since both means tests are similar (both originated in the welfare programs), a disabled child in placement will often meet both means tests simultaneously.

While a child may be eligible for both SSI and IV-E simultaneously, SSI offsets any SSI payments dollar-for-dollar for any IV-E maintenance funds received by an individual child in the same month. Therefore, as a practical matter, either SSI or IV-E, but not both, may be claimed by the State to help pay for a child's foster care in a given month. Nevertheless, it is still important for IV-E eligibility to be established in every possible foster care case, even if the SSI is claimed for foster care income maintenance, because IV-E administrative funds are claimed for every IV-E eligible child. Thus, for an SSI/IV-E eligible child, the state and counties may claim both IV-E maintenance and IV-E administrative funding, or they may claim SSI maintenance and IV-E administrative funding. See Section [10-20-25-20](#) on selecting the source of maintenance funding for the SSI/IV-E eligible child.

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Determining IV-E Eligibility with SSI in the Removal Household 447-10-20-20-05

(Revised 5/15/07 ML #3087)

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When another member of the child's household (home of removal) is receiving SSI during the child's removal month, these SSI payments should be disregarded as income and the SSI eligible person should not be counted in the computation of the number of persons in the household.

EXAMPLE: A child is removed from the home of the child's disabled SSI-eligible father who receives \$500/month SSI and also earns \$200/month, the child's stepmother, and her two other children. The stepmother is employed part time and earned \$300 per month. For the IV-E means test, the removal household of five persons (counting the child removed) is treated as a household of four; one adult and three children, since the SSI eligible parent is not counted. Father and his income, both earned and unearned, are excluded, leaving countable household income of \$300/month. This case would meet both the AFDC deprivation (absent mother and disabled parent) and the means tests.

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SSI Children Entering Foster Care 447-10-20-20-10
(Revised 7/1/24 ML #3841)

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A child in receipt of disability Social Security (SSI) must be thoroughly evaluated for IV-E eligibility. SSI eligibility is a good indicator (although not a guarantee) that a child entering care will meet the means test for Title IV-E eligibility during the removal month, since that child has previously passed the similar SSI means test. To be IV-E eligible, the home of removal must still meet all the Title IV-E requirements during the eligibility month.

An SSI eligible child entering foster care is counted as part of the AFDC family unit for foster care purposes, but their earned and unearned income and assets are not counted. Any other family unit member in receipt of SSI is not counted as part of the assistance unit in the eligibility month. Assets and/or income which are owned solely by the SSI recipient, including that portion of income which is disregarded by the Social Security Administration in determining SSI entitlement, may not be considered available to the AFDC family. Income, which is earmarked for members of the AFDC unit, including income earned by the eligible AFDC caretaker, must be applied against the family's needs with no portion of such income being "deemed" to the SSI recipient. However, income, liquid assets, and/or real and personal property owned jointly by the SSI recipient and AFDC applicant/recipient are to be apportioned equally on a 50-50 basis between the SSI and AFDC units, unless otherwise indicated.

NOTE: RSDI, SSA, and SSDI payments are computed as income to the family in determining IV-E eligibility. SSI is not to be confused with RSDI, which is Retirement, Survivors', and Disability Insurance administered by the Social Security Administration. RSDI is sometimes referred to as SSA (Social Security Administration payments) or SSDI (Social Security Disability Insurance payments). These are non-means-tested benefits paid to adults and children as survivors or dependents of a deceased or disabled person who has paid into the Social Security Trust Fund.

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Any month in which the representative payee has received an SSI payment on behalf of a child in foster care, Title IV-E and Emergency Assistance funding cannot be used to reimburse the placement. The placement must be reimbursed with regular state funds.

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Foster Children Becoming SSI Recipients
447-10-20-20-15

(Revised 7/1/24 ML #3841)

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The custodial agency is responsible for notifying the FCSA Eligibility Unit when a child becomes eligible for social security benefits. Social security benefits that are saved on behalf of a child are an asset and the balance must be monitored and reported on an SFN 642 Title IV-E Title XIX Income/Asset Report quarterly.

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Social Security Organizational Representative Payee 447-10-20-20-20

(Revised 1/1/25 ML #3888)

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Definitions:

Social Security Administration (SSA): is an independent Federal government agency that administers two major benefit programs.

SSA or RSDI Benefits – Retirement, Survivors and Disability

Insurance: Benefits paid by SSA under Title II of the Social Security Act. These are commonly called **social security (SSA)** benefits. They are based on the earnings of a worker who has paid into the system by paying Federal Insurance Contributions Act (FICA) tax for a specified period of time. A worker, or his or her family, can receive RSDI benefits upon the worker's attainment of a certain retirement age, disability, or death.

SSI Benefits – Supplemental Security Income: Benefits paid by SSA under Title XVI of the Social Security Act for aged, blind, and disabled persons with little or no income or resources.

Representative Payee – an individual or organization appointed by SSA to receive and manage the **social security** or **SSI** benefits of another person. A representative payee must use the funds they manage for the exclusive use and benefit, and in the best interest of the beneficiary.

Representative Payees are categorized into two broad groups:

- **Individual payees (RP)** – These include relatives, guardians, friends, or any other interested person who is in a position to care for the beneficiary.
- **Organizational payees (ORP)** – These can include social service agencies, institutions, State or local government agencies, or financial institutions.

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Please refer to the Social Security Administration website for a complete description of Representative Payee responsibilities.

SSI Benefits – Supplemental Security Income

SSI dollars are meant to meet the daily living and medical expenses for a child. These dollars are not meant to be banked. Federal dollars are used to fund SSI benefits and as a result, child in foster care eligible under Title IV-E or Emergency Assistance (EA) are eligible for reimbursement of their care with SSI or foster care funds through Title IV-E or EA but are not eligible to receive both. In any month a child is in receipt of SSI dollars, foster care is payable through regular foster care funds.

Social Security Administration allows a maximum **asset limit is \$2000 for SSI recipients**. The amount retained in the following month in a savings or checking account cannot exceed \$2000. A minimum of \$30 should be retained from every check and given to the child for personal use. If the child is older and has additional expenses or a specific item they wish to purchase, SS money can be allocated for that purchase.

SSA Benefits – Retirement, Survivors and Disability Insurance

SSA benefits are considered unearned income for the child. Social Security does not have a maximum asset limit for SSA recipients, but Title IV-E foster care does. The maximum asset limit for a foster care child is \$10,000 under foster care guidelines. Once the asset maximum is reached, the case is no longer reimbursable under Title IVE and general funds must be used to reimburse foster care expenditures. The custodial agency must “spend down” any excess amount over \$10,000 for the case to again be Title IV-E reimbursable.

REACHING ALLOWABLE ASSET MAXIMUMS

The amount of SSI or SSA retained in a checking or savings account should be monitored closely to ensure the case does not exceed the allowable asset maximum. A case in which the maximum is reached is not reimbursable under Title IV-E. The amount received over the allowable maximum must be used in the month it is received towards the child’s

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expenditures. Foster care payments will continue to be disbursed monthly through the payment system.

For all children, regardless of their eligibility determination, in receipt of SSI benefits and that reach the allowable \$2000 maximum, the overage must be returned to Social Security Administration with an explanation as to why the benefits are being returned. This will prompt Social Security to reevaluate the monthly benefit and it may result in a reduction due to the child's needs being met under another federally funded program.

For a Title IV-E child in receipt of SSA benefits that reaches the \$10,000 maximum under foster care guidelines, the asset limit must be monitored monthly. To maintain Title IV-E reimbursement, the asset limit must be under \$10,000. The custodial agency must work with the child to spend down the asset amount. The child is not reimbursable under Title IV-E until the asset is within the allowable maximum. A match symbol adjustment from FM to FN is required for any month in which the case exceeds the allowable maximum. For children under tribal custody, the foster care expenditures will become the responsibility of the Tribal Nation until the asset is spent down to within the allowable maximum.

SSI VERSUS TITLE IV-E OR EA FUNDING SOURCE

When a child is eligible for both SSI and Title IV-E or EA funding, the custodial agency and the FCSA Eligibility Unit must determine, based on the best interest of the child, which federal funding source to elect for the foster care income maintenance costs. Federal guidelines prohibit an agency from claiming reimbursement from two federally funded programs for the same eligible case.

The custodial agency is responsible for notifying Social Security Administration of the child's placement, the amount expended for the child's care and which funding source will be used. An agency cannot claim both SSI and Title IV-E or EA.

SSI should not be offset if:

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- a. the SSI payments are significantly greater than the cost of the child's foster care;
- b. the foster care placement is expected to be very short term and reinstating SSI payments would disrupt the child's support; or
- c. for any reason it is known that offsetting SSI payments would jeopardize future eligibility for such benefits by the child.

The agency should also consider the fiscal interest of the state in electing IV-E or EA funding in lieu of SSI payments as well as the child's cost of care. As a rule of thumb, whenever the cost of care is double the child's monthly SSI payment, it will always be in the State's fiscal interest to offset SSI and claim IV-E or EA funding. (In 1999, the IV-E income maintenance federal share is about 70%, so it is currently in the state's fiscal interest to claim IV-E whenever the cost of care equals more than 170% of the SSI payment.)

EXAMPLE 1: A disabled child in residential care receives monthly SSI of \$552. The cost of care for this child is \$1500 per month, which the state partially offsets with the \$552 SSI received as ORP. It is in the fiscal interest of the state to offset the SSI and claim IV-E income maintenance instead, which will bring $\$1500 \times 70\% = \1050 per month federal to the state – twice as much as the \$552 SSI.

EXAMPLE 2: A disabled child in foster care receives monthly SSI of \$552. The child's therapeutic foster care costs the state \$600 per month. It is in the state's interest to retain the \$552 SSI, since IV-E would bring less: $\$600 \times 70\% = \420 .

EXAMPLE 3: A disabled child in foster care receives monthly SSI of \$552.00. The child's family foster care cost is \$357.74 per month. The cost of care is less than the SSI benefit. Therefore, the SSI benefit would not be suspended and foster care would be paid out of general funds. If it is in the best interest of the child, the agency would need to apply to become the payee for the SSI and each month submit the care cost of \$357.74 to the state. The remaining balance of \$194.26 would then be put into an established savings

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account for the child. In this same instance, \$100.00 child care costs are also being paid for as an irregular expense. \$100.00 would be sent into the state for reimbursement of this expense and the remaining balance of \$94.26 would be deposited into the child's bank account.

Even when the federal claim is only marginally above the SSI amount, the IV-E or EA election may be wise. Placements of disabled children are more frequently longer-term than others, and the cumulative state costs of making the "wrong" IV-E or EA versus SSI election can be enormous over time. Given the potential fiscal consequences, agency staff should seek supervisory or state office guidance where judgments on this election seem particularly difficult.

NOTE: Regardless of whether SSI or IV-E is claimed for the foster care cost, IV-E administration can be claimed for this case. This is accomplished by counting such a case either as a IV-E reimbursable case (FM), or as one which is IV-E eligible but not IV-E reimbursable (FN) for the months in which SSI is claimed.

MATCH SYMBOL FM/FN OR EA/RM

The payment authorization match symbol identifies the funding source of payments for Title IV-E and Emergency Assistance (EA) eligible children. Title IV-E and EA are both federally funded programs. Based on the child's eligibility determination, all payments in the month in which a child does not receive SSI benefits (payment suspended or becomes ineligible) are coded with a match symbol of FM (Title IV-E) or EA (Emergency Assistance).

Federal guidelines prohibit a state to claim federal dollars from two federally funded programs for the same individual's care. Therefore, the match symbol for all payments in the month in which a child receives SSI benefits must be changed from FM to FN (Title IV-E non-reimbursable) or EA to RM (Regular Match-state general funds) depending on the eligibility determination of the child.

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MATCH SYMBOL NA

A match symbol of NA is used in the foster care payment authorization to identify funds expended for a child under Tribal custody that is Title IV-E eligible and reimbursable. A child that meets the foster care eligibility requirements and is not in receipt of SSI benefits may be reimbursed, as per the state agreement, using the NA match symbol.

A child that is determined eligible under Title IV-E but is in receipt of SSI benefits is not eligible for reimbursement through the state payment system. The case will remain Title IV-E eligible but is not reimbursable until the SSI benefit has been suspended. The Tribal Nation is responsible to reimburse the foster care expenditures for any month in which the child is in receipt of SSI benefits.

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Resources:

The Official Website of the U.S. Social Security Administration
<http://www.ssa.gov/>

Training Organizational Representative Payees
<http://www.ssa.gov/payee/LessonPlan-2005-2.htm#WHATISORG>

Guide for Organizational Payees -
<http://www.ssa.gov/payee/NewGuide/toc.htm>

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Emergency Assistance Eligibility 447-10-20-25
(Revised 10/1/2023 ML #3502)

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A foster child must be determined ineligible for Title IV-E funding prior to determining Emergency Assistance (EA) eligibility. The eligibility worker must complete the initial eligibility determination as outlined under 447-10-20.

A child must meet the following criteria to be Emergency Assistance (EA) eligible. An emergency exists because:

1. A child is in out-of-home care;
2. The child is under the care and custody of a public agency.
3. The child must have lived with a parent or specified relative within the last six months prior to the foster care eligibility month or at initial placement.

A child eligible for EA, but in receipt of SSI, is not reimbursable through EA. Regular Foster Care funds must be used to reimburse foster care expenditures in any month in which the child received SSI. Refer to section [447-10-20-20-20](#).

Children do not meet the Emergency Assistance eligibility if:

1. He/she meets Title IV-E eligibility criteria
2. He/she did not physically reside with a parent or specified relative during the six months prior to the eligibility month.

A child that has not physically resided with a parent or specified relative during the six months prior to the eligibility month and meets all other eligibility criteria, is not eligible for Emergency Assistance, but would be eligible under Regular Foster Care.

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Regular Foster Care Eligibility 447-10-20-30
(New 4/25/17 ML #3502)

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A child that is not eligible for Title IV-E or Emergency Assistance because they have not lived with a relative at any time during the 6 months prior to the eligibility month and meets all other foster care eligibility criteria is eligible for Regular Foster Care.

An example would be if a child has not had contact with their biological family and relatives in the six months prior to the eligibility month and has resided with a non-relative for the entire time.

Foster care expenditures for a Title IV-E or Emergency Assistance eligible child, who is in receipt of SSI in any given month, must be reimbursed through regular foster care. Refer to section [447-10-20-20](#).

All of the rules, policies, regulations, and guidelines pertaining to permanency planning and other eligibility criteria for foster care remain the same.

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Reimbursement 447-10-25
(Revised 1/1/25 ML #3888)

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Once eligibility is determined, reimbursement must be established. Reimbursement requires a series of conditions be met. Eligibility is not affected if the case is determined non-reimbursable, nor does that mean that reimbursement cannot be established for the following month or for later months. There are certain criteria for reimbursement with the Title IV-E and Emergency Assistance funds. They are:

1. Child is determined eligible under foster care guidelines
2. Placement and care responsibility is with a public agency.
3. Judicial determination requirements are met.
4. Not in receipt of TANF or *Supplemental Security Income (SSI)
5. Licensed/approved placement setting (the foster home must have a "full" license – not provisional)
6. *Under 18 or a child between the ages of 18 and 19 in secondary school or training full time and expected to graduate or complete training before turning age 19.

Title IV-E cannot be claimed until the first of the month in which both judicial findings of contrary to the welfare and reasonable efforts have been obtained from the court within the time frame allowed.

*State general funds may be used in a case in which there is SSI or the child is age 18 still under the custody of a public agency or is eligible under the 18+ Continued Foster Care program, but is not expected to graduate before turning age 19.

An eligible child that does not meet the Title IV-E eligibility or may not meet the Title IV-E reimbursement requirement in a given month, must be reimbursed through emergency assistance funds or state general funds.

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Reimbursement depends on the eligibility determination and the case meeting the required criteria for reimbursement.

At the time of removal, a child will lose reimbursement for the entire foster care episode if the required judicial determinations of contrary to the welfare and reasonable efforts are not obtained within the required timeline. Financial responsibility become the responsibility of the custodial agency.

In an ongoing foster care episode, a child will lose reimbursement in any month in which the required judicial determinations are not obtained timely. Financial responsibility becomes the responsibility of the custodial agency for any month in which there are no findings. Reimbursement can begin on the first of the month the required judicial determination is obtained. Nunc pro Tunc orders are not allowed and payment cannot be made for a month prior to the hearing date in which the findings were obtained.

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Legal Responsibility 447-10-25-05
(Revised 1/12/15 ML #3429)

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Applies to all children in Foster Care.

There must be a court order, as defined in Legal Status 447-10-20-10, which gives a public agency legal responsibility for the custody and placement of the child. Removal of a child from the child's home for placement in the foster care must be based on judicial findings stated in the court's order, and determined on a case-by-case basis in a manner that complies with the requirements of Titles IV-B and IV-E of the Social Security Act.

Judicial determinations must be made by a District Court Judge, Tribal Judge, or judicial referee, which has the authority to make such a determination.

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Reasonable Efforts - Requirements 447-10-25-10
(Revised 11/20/17 ML #3522)

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Federal child welfare requirements and North Dakota law requires a judicial determination that an agency has made reasonable efforts to prevent removal/placement or reasonable efforts were not required due to emergency or aggravated circumstances and within 12 months, reasonable efforts have been made to finalize the permanent plan.

A court finding that "reasonable efforts have been made to prevent the child's removal from the home" or "reasonable efforts are not required" must be made within 60 days of the child's actual removal from the home. If a finding is not made within this period, the child's entire foster care episode is ineligible and non-reimbursable.

A permanency hearing is required within 30 days of a court finding of "no reasonable efforts are required to return the child home" when the removal is a result of aggravated circumstances as defined under section 447-10-25-10-05.

A court finding that the agency has made reasonable efforts to finalize the permanency plan must be made within 12 months from when the child "enters foster care." If it is not made within this period, the placement becomes non-reimbursable for any month in which there are no findings. The placement will again be reimbursable, providing all other criteria are met, starting the first day of the month in which the court finds the agency has made reasonable efforts to finalize the permanency plan.

The findings must be explicit, specific, and made on a case by case basis. The detailed findings can be provided in a number of ways:

1. The court order describes the efforts in the language of the court order or findings;

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2. The court order contains language that cross references or refers specifically to detailed statements in an agency or other report submitted to the court.
3. Items may be checked off from a detailed checklist within the court order.

If there are no detailed findings describing reasonable efforts, but the court verbally made them during the course of the hearing, the transcript can be used to document these findings.

Affidavits, nunc pro tunc orders, and orders simply referring to state laws requiring reasonable efforts for removal do not meet the requirement. 45 C.F.R. § 1356.21(d). Affidavits can be incorporated by reference to offer details and substance to the judicial determination made by the judge, but an affidavit incorporated by reference cannot make a judicial determination. Also, the exact wording of the federal statute does not have to be used as long as the findings make clear that the agency made reasonable efforts.

Reasonable efforts to place a child for adoption, with a fit and willing relative or other appropriate individual as a legal guardian, or in another planned permanent living arrangement, may be made concurrently with reasonable efforts to return the child safely to the child's home.

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Reasonable Efforts - Exceptions to Requirements
447-10-25-10-05

(Revised 11/1/10 ML #3249)

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Reasonable efforts to prevent removal or return a child home are not required if a judicial determination is obtained that such efforts are not required because:

1. Certain felonies have been committed against the child or another child of the parent,
2. The parent has previously had parental rights to another child involuntarily terminated, or
3. When “aggravated circumstances” are present, as specified and defined by state law.

The regulations repeat the suggested federal statutory language for aggravated circumstances: abandonment, torture, chronic abuse, and sexual abuse.

When children are removed in emergency situations, the court must consider whether appropriate services were or should have been provided. When the court determines that it was reasonable for the agency to make no effort to provide services to prevent removal (or to return the child home) as a result of emergency circumstances, such as the safety or protection of the child, there must be a judicial determination to the effect that efforts to prevent removal or reunify the family **have not been made due to the immediate danger to the child or that efforts were not possible due to the emergency situation.**

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Reasonable Efforts - Preventing Placement
447-10-25-10-10

(Revised 11/1/10 ML #3249)

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Part of the permanency planning philosophy includes the premise that every effort will be made to prevent the placement as well as developing and maintaining adequate care plans once the child is in care. The decision to place a child outside their home is a monumental one, which should be made only with the greatest care and deliberation. It damages whatever continuity the child has experienced and introduces new emotional risks.

The agency shall provide a range of services and commit its resources to preserve the child's family and prevent inappropriate placements. The agency shall ensure that placement is arranged only after services to improve conditions that may necessitate placement have been provided and failed, or offered and refused; and when there is a clear danger to the physical and emotional well being of the child. These requirements are based upon federal law found in Parts IV-B and IV-E of the Social Security Act.

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Permanency Hearing 447-10-25-10-20
(Revised 11/1/10 ML #3249)

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Every child in foster care must have a “permanency hearing” within 12 months of the child/youth entry to foster care or continuing in foster care following a previous permanency hearing. The hearing must be held in a juvenile court or tribal court of competent jurisdiction (these replace the former dispositional hearings), or as an option, by the Division of Juvenile Services (DJS) for youth under its custody as a placement hearing under N.D.C.C. § 27-21.

A judicial determination that the agency has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care, and at least once every twelve months thereafter while the child is in foster care. The requirement for subsequent permanency hearings applies to all children, including children placed in a permanent foster home or a preadoptive home.

In addition, a permanency hearing in the court or DJS must be conducted within thirty (30) days after a court determines that reasonable efforts are not required because:

1. Certain felonies have been committed against the child or another Child of the parent,
2. The parent has previously had parental rights to another child involuntarily terminated, or
3. When “aggravated circumstances” are present, as specified and defined by state law.

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The regulations repeat the suggested federal statutory language for aggravated circumstances: abandonment, torture, chronic abuse, and sexual abuse.

The hearing shall determine the court-approved permanency plan for the child that determines, if applicable, when:

1. The child will be returned to the parent;
2. The child will be placed with a relative;
3. The child will be placed with a legal guardian;
4. The legal custodian (or State) will petition for termination of parental rights;
5. The child will be placed for adoption; or
6. The child will be placed in another planned permanent living arrangement. This applies in cases where the legal custodian has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption with a fit and willing relative or with a legal guardian.

The hearing shall also determine:

1. Whether and, if applicable, to place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that the joint placement would be contrary to the safety or well-being of any of the siblings.
2. Whether and, if applicable, in the case of siblings removed from their home who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is determined to be contrary to the safety or well-being of any of the siblings.
3. Whether an out-of-state placement continues to be appropriate and in the best interest of the child; and
4. In the case of a child who has reached age 16, the services needed to assist the child to make the transition from foster care to independent living.

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Federal Regulations changed effective March 27, 2000, related to children in long-term care with a specified caregiver. It is no longer acceptable for a court to name a specific foster home in the court order. Placement and care responsibilities must rest with the agency, or foster care payment cannot be made. The requirement for 12-month permanency hearings (formerly dispositional hearings), now applies to ALL children in foster care.

Paper reviews, ex parte hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and the foster parents or preadoptive parent (if any) are not permanency hearings.

Continued Court Orders:

When findings of reasonable efforts to finalize the child's permanent plan are negative, insufficient or missing, foster care payments cannot be made until there is a positive finding. Continuances of the permanency hearing date and extension of the current court order which may delay the 'finding' of the permanency hearing until after the twelfth month will not meet the requirements of IV-E reimbursability. The required finding must be made every 12 months while the child is in care from the time the child is considered to have entered foster care. Foster care payments will terminate on the last day of the calendar month in which the findings were due. Once permanency findings are issued by the court, payments may be reinstated back to the first day of the calendar month in which the findings are made.

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**Alternative Permanency Placements 447-10-25-10-20-05
(Revised 5/15/07 ML #3087)**

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The Adoption and Safe Families Act (ASFA) regulations effective March 27, 2000, require a significant change in practice related to long-term foster care. The changes are consistent with discouraging the use of long-term foster care, and the preference for another permanency arrangement for the child such as adoption or guardianship. Throughout the new federal regulations related to ASFA, you will note references to "another planned permanent living arrangement," and few, if any, references to long-term foster care.

The requirement for the 12-month permanency hearing (and every 12 months thereafter) applies to the child "in another planned permanent living arrangement."

Children entering "another planned permanency living arrangement":

When other options such as reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative have been ruled out, and it is concluded that "another planned permanent living arrangement" is the most appropriate plan for the child, the agency must document to the court the compelling reason for the alternate plan.

The child's case plan along with the "compelling reasons" document must be available to the court for review during the next permanency hearing.

Permanency Planning Requirements:

The quarterly permanency planning reviews now apply to all children in foster care, including those in "another planned permanent living arrangement". This will ensure that the placement is reviewed and the case

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plan kept up-to-date for the court's yearly review at the 12 month (or sooner) permanency planning.

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Specified Caregiver 447-10-25-10-20-10
(Revised 5/15/07 ML #3087)

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The Supplementary Information to the federal regulations issued January 25, 2000, clarifies that it is not permissible for courts to extend their responsibilities to include ordering a child's placement with a specific foster care provider. The child's placement and care responsibility must be with a public agency (the State agency or another public agency with whom the State agency has an agreement).

Once a court has ordered a placement with a specific provider, it has assumed the State agency's placement responsibility.

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**Concurrent Receipt of TANF and Title IV-E 447-10-25-15
(Revised 5/15/07 ML #3087)**

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There is no prohibition in the Title IV-E program against the concurrent payment of TANF and Title IV-E benefits on behalf of the same child.

The purpose of Title IV-E foster care payments is to provide for the maintenance of TANF-eligible children in foster care when they cannot remain in their own homes. The Title IV-E payment to the foster parents or child care institution to provide for the child's needs is made in lieu of the TANF payment to the family from which the child has been removed. Title IV-E may begin from the first day of placement in the month in which all eligibility criteria are met, regardless of whether a TANF payment has been made on the child's behalf for that same month.

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Reimbursable Facility 447-10-25-20
(Revised 11/1/10 ML #3249)

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Applies to all children in foster care.

A foster care payment can be made only to an authorized foster care provider. There are three types of providers who meet the law's definition of a reimbursable facility:

1. A licensed or affidavit foster family home, not a provisional license;
2. A private, non-profit or for-profit, non-medical group home or residential child care facility licensed by the state;
3. A public non-medical group home or institution, which is licensed for no more than 25 children.

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Need 447-10-25-25
(Revised 5/15/07 ML #3087)
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To maintain reimbursability the child must have a financial need in AFDC terms. Need has two elements. First, the income available to the child must be less than the costs of maintaining the child. Income available includes all forms of income the child receives. Income is the gain or benefit, earned or unearned, derived from labor, business, capital, or property, which is received or is available to the assistance unit. It is considered when actually available when the applicant has a legal interest in a liquidated sum and has the legal ability to make such sum available for support or maintenance. All unearned income would be considered available to the child, while earned income would only be partially available since the AFDC rules allow disregards for work expenses and for earnings of employed students in accordance with Service Chapter 400-15-10. The cost of maintaining the child is the amount the state is paying for the foster care placement of the child. In any month where the child's income after deductions exceeds this amount, the child is not reimbursable.

The earnings of a part-time student employed part-time are counted in the eligibility test in the initial month only. All other earnings of a dependent child who is a full-time student or a part-time student not employed full-time are exempt.

The second element of need is a child's assets. If a child's assets exceed \$10,000 in non-exempt assets in any month the child is not reimbursable.

At re-determination, a child in foster care is considered his/her own assistance unit and financial need is determined based on income and assets available to the child. In establishing the initial eligibility, the income and assets of the child's parent(s) would have been considered if the child lived with either parent in the eligibility month. In the test of need in a reimbursability determination, the income and assets of the child's parents are not to be considered. The income test against the State need standard

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is applicable to the child's available income at all times throughout the foster care episode.

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AFDC Deprivation 447-10-25-30
(Revised 5/15/07 ML #3087)

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Applies to Title IV-E eligible children only.

A child in foster care must continue to meet one of the AFDC deprivation factors in order to maintain Title IV-E reimbursability. In the foster care context this means that if the child were to be returned to the home from which he or she was removed, deprivation would exist in that home. As with the eligibility determination this means that one or both parents is absent from the home, or physically or mentally disabled, or that the principal wage-earning parent is unemployed or under employed. The "home" considered in the reimbursability deprivation test is the home from which the child was removed in the eligibility test. A child was removed from the home of a relative other than the parents, it is this home, which is considered in establishing reimbursability, and the deprivation factor is permanent absence. However, the deprivation factor of absence would no longer apply if the parents move in with this relative.

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Under the Age of 18 or 19 if in School 447-10-25-35
(Revised 7/1/24 ML #3841)

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(Applies to all children.)

A child loses Title IV-E eligibility and reimbursability when the child reaches the age of 18, unless the child is enrolled full-time in high school or an equivalent course of study and can reasonably be expected to graduate prior to the child's nineteenth birthday. If the child meets this exception, reimbursement may continue until the child graduates or turns 19, whichever occurs first.

When the child turns 18, the 18+ Continued Foster Care Program is available. (See 624-05 and [447-10-52](#))

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Role of DJS 447-10-30-05
(Revised 1/1/24 ML #3784)

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The Division of Juvenile Services (DJS) is responsible to provide the Foster Care and Subsidized Adoption (FCSA) Eligibility unit with the required eligibility documents for eligibility determination. Every effort should be made to acquire the required eligibility documents as quickly as possible from the time of removal. The caretaker from which legal custody has been removed is responsible for completing the SFN 641, Title IV-E Title XIX Application-Foster Care.

Documentation needed to determine Title IV-E eligibility and reimbursement should be submitted to the FCSA Eligibility Unit within 45 days or sooner from the date of removal. Documents that are incomplete or incorrect will be returned to the custodial agency with a request for correction. A case that cannot be determined within 45 days of the receipt of the first document notifying the unit of the child's placement out of the home, will be considered incomplete and will be returned to the case worker with explanation and request for follow up. Once the case worker has made the correction or obtained the missing documentation, the eligibility documents can again be submitted to the unit for eligibility determination. Retroactive payments in excess of 90 days are not allowed. For the purpose of the initial payment, foster care expenses in excess of 90 days from when all documents are received and eligibility can be determined would not be eligible for reimbursement.

Children under the custody of DJS who are removed from their home and initially placed in the Youth Correctional Center (YCC), or a non-foster care arrangement, are not entered into the case management system. If later the child enters a paid foster care placement, the case can then be opened in the case management system by the DJS case worker effective the date of the paid placement. Subsequently when a child leaves a paid placement, the DJS case worker must update the placement setting as soon as possible. If the placement change is into a non-foster care setting, but the child is expected to return to foster care placement, the foster care

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program will remain open and the placement setting updated. If the child is not expected to return to a paid foster care placement, the foster care program and case must be closed by the DJS case worker.

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Case Plan 447-10-30-10
(Revised 11/1/10 ML #3249)
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Applies to all children in Foster Care.

As a condition of receipt of federal financial participation, social service personnel or personnel of a public agency which has a currently effective agreement with the Department of Human Services for providing such services must develop and maintain a case plan.

(See Service Chapter 624-05-15-50)

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Child's Income and Assets 447-10-30-15
(Revised 1/1/25 ML #3888)

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The earned and unearned income and assets of a child must be evaluated and monitored very closely. The basic principle is that the payment to the foster care provider will be made by the state. A Title IV-E eligible child that meets the definition of a dependent child with income is eligible to receive Title IV-E reimbursement so long as the asset limits are within the \$10,000 maximum. A child with assets in excess of \$10,000, becomes non-reimbursable with Title IV-E funds in any month the asset exceeds the maximum. Payments for non-Title IV-E reimbursable cases must be made through state general funds providing the case meets all other criteria. The custodial agency must spend down the amount over \$10,000 toward the cost of the child's need and care. Once the asset limit is below \$10,000, the case will again become Title IV-E reimbursable in the following month. This is only applicable to on-going Title IV-E foster care cases, in which the child's assets have built up in excess of the \$10,000 allowable maximum.

Cases that are not IV-E eligible at the time of initial eligibility determination are not subject to the \$10,000 maximum.

The custodial agency must report changes in the child's earned and unearned income and assets to the Foster Care and Subsidized Adoption Eligibility Unit.

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**Tribal Agreements Regarding Title IV-E Payments
447-10-35**

(Revised 5/15/07 ML #3087)

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The North Dakota Department of Human Services has entered into formal agreements with interested Indian tribes pertaining to Title IV-E (AFDC related) foster care eligibility. The agreements allow the tribe or tribal court to retain jurisdiction including placement and care responsibilities of children and still have Title IV-E foster care eligibility for a child if all other Title IV-E foster care eligibility requirements are met.

The North Dakota Department of Human Services has agreements with the following tribes:

- Spirit Lake Sioux Nation (formerly Devils Lake Sioux Tribe)
- Standing Rock Sioux Tribe
- Three Affiliated Tribes (Fort Berthold)
- Turtle Mountain Band of Chippewa Indians

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**Native American Parents Living on an Indian Reservation
when the Child Enters Foster Care 447-10-40**

**Jurisdictional Limitations - County Social Service Board
447-10-40-05**

(Revised 5/15/07 ML #3087)

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On the federal Indian reservations, the role of the county social service board must fall within judicial and jurisdictional limitations. The state recognizes a government-to-government relationship with the tribes.

The role of the county social service board is limited because the state has neither criminal nor civil jurisdiction over Native American children.

The tribe has the right to set their own foster home licensing standards. The state will accept an affidavit of compliance with the tribal licensing standards. The standards must be reasonably in accord with a national licensing standard, be adopted by formal tribal resolution, and submitted to the Department along with a copy of the standards.

Tribes may only receive title IV-E funds pursuant to a title IV-E agreement with a State. A Tribe that enters into such an agreement must comport with section 471(a)(20) of the Act and section 1356.30 in accordance with the State plan in order to receive title IV-E funding on behalf of children placed in the homes it approves. The Tribe must provide documentation that criminal records checks have been conducted with respect to prospective foster and adoptive parents.

The background check consists of the following:

1. Completion of "Personal Authorization for Criminal Record Inquiry," SFN 838, for each adult in the prospective foster home.

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2. Completion of "Background Check Address Disclosure," SFN 377, for each adult in the prospective foster home.
3. Completion of two fingerprinting cards, if required.

In the absence of unique tribal foster care licensing standards, the state will accept an affidavit (signed by a tribal official) that the home meets state licensing standards.

State law applies to non-Indian persons on Indian reservations, including the requirement for licensing foster homes in accordance with state law and rules for the care of any foster child.

By tribal resolution, press release, and otherwise, Native American people have made known a concern over the removal or possible removal of Native American children from the reservation to a non-Indian culture off the reservation. This concern is to be recognized and respected. Therefore, with reference to Native American children living on a federal Indian reservation, representatives of the Department of Human Services and county government will not be involved in the removal of any Indian child from the child's parents or the placement of the Indian child off the reservation. The county may respond to the Tribal Court in terms of social information or recommendations. In keeping with this concept, the county social service board is not to accept legal custody of a Native American child unless the appropriate court has first determined the child is to live and be cared for off the reservation.

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Financial Responsibility of Foster Child Under the Custody of the Tribe 447-10-40-10

Title IV-E - Role of County Social Service Board 447-10-40-10-05

(Revised 4/25/17 ML #3502)

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When Title IV-E financial assistance is needed to provide foster care payments, the parent(s), person or tribal agency legally responsible for the financial support of the foster child or children needing foster care will make application on SFN 641, Title IVE/ Title XIX Application-Foster Care. The tribe is responsible to provide the county eligibility staff with all individual and family information (including copies of court orders, income, assets, determination of deprivation and other AFDC related requirements) regarding a child so a proper determination of Title IV-E eligibility may be made. The eligibility staff determines eligibility, but the tribe must provide the necessary documentation.

Every attempt should be made to provide the Administrative County with a timely application. Documentation needed to determine Title IV-E eligibility and reimbursability must be received by the Administrative County within 45 days of receiving the application for foster care. If the information is not received within 45 days, the application will be considered incomplete and closed. Retroactive payments in excess of 90 days are not allowed. For the purposes of initial payment, foster care expenses in excess of 90 days from when all documents are received by the administrative county to determine eligibility would not be eligible for reimbursement.

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Title IV-E - Role of the Tribe 447-10-40-10-10
(Revised 5/30/19 ML #3550)

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The tribe is responsible to provide the designated county staff with all required documentation needed for initial Title IV-E eligibility determination.

Every attempt should be made to provide the Administrative County with a timely application. All documentation needed to determine Title IV-E eligibility and reimbursability should be submitted to the Administrative County within 45 days from the date the child was legally removed from the home. The tribe will be notified by the designated county staff of information that is incomplete or missing that is required to determine eligibility.

If complete information is not received within 45 days of the date the county initially received the eligibility documents, the application will be considered incomplete and the county will return the information to the tribe closing the case. The case may be resubmitted to the designated county for eligibility determination once all of the information that made the prior submission incomplete is obtained.

Retroactive payments in excess of 90 days from the time eligibility can be determined are not allowed. For the purposes of initial payment, foster care expenses in excess of 90 days from when all documents are received by the administrative county to determine eligibility would not be eligible for reimbursement.

Documents required for Title IV-E eligibility determination include:

- Copies of the initial removal order and subsequent court orders, along with incorporated affidavits/petitions;
- A completed SFN 630 – Foster Care Placement Notification;
- A completed SFN 641 – Title IV-E Title XIX Application Foster Care; and

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The tribe will be notified by the designated county of the determination for each case. A case that is determined non-IV-E will be returned with a cover letter explaining why the case was ineligible for IV-E.

Cases that are Title IV-E eligible must be entered into the case management system and payments must be authorized through the payment system by the designated county. The tribe is responsible to provide the county with copies of subsequent court orders that contain timely and necessary judicial determinations for ongoing reimbursability. An SFN 45 – Notice of Change is required for all status changes. Care plan information is required to keep the case management system and payment system current to allow accurate payments to providers.

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Title IV-E - Role of HHS/CFS 447-10-40-10-15
(Revised 1/1/24 ML #3784)

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Children and Family Services is responsible for determining foster care eligibility, authorizing maintenance payments, Medicaid case maintenance, and system data entry for a child removed as a result of a court order who meet the Title IV-E eligibility and reimbursement criteria. Maintenance payments are reimbursed through the payment system to eligible foster care providers. The proper match symbol code for an eligible Tribal Title IV-E child is NA.

The financial county assigned in the payment system is based on the Tribal Nations location within the state. The financial county assignment is as follows:

- Spirit Lake Sioux Nation – Benson County (03)
- Standing Rock Sioux Tribe – Sioux County (43)
- Three Affiliated Tribes (Fort Berthold) – Mountrail (31)
- Turtle Mountain Band of Chippewa Indians – Rolette (40)

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**Native American Foster Child is Under Custody of DJS
447-10-40-15**

**Role of County Social Service Board 477-10-40-15-05
(Revised 5/30/19 ML #3550)**

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The county social service board is responsible to determine eligibility and reimburse eligible foster care expenditures for any foster child under the legal custody of the Division of Juvenile Services in accordance with NDDHS Service Manual Chapters 447-10 and 623-05. All efforts should be made to secure Title IV-E eligibility.

For Indian children who are Title IV-E eligible, the proper match symbol is NA.

For Indian children under the custody of the Division of Juvenile Services Only, who are not Title IV-E eligible, and whose parents live on the reservation at the time the child enters foster care, the proper match symbol is NR for the ten designated counties assisting with tribal foster care eligibility.

For Indian children under the custody of the Division of Juvenile Services, who are not Title IV-E eligible, and whose parents did not live on the reservation at the time the child enters foster care, the match symbol will be EA or RM depending on the eligibility determination outcome as per policy.

Federal regulation, 45 CFR 1356.67 mandates that each state with a Title IV-E plan approved under section 471 of the Social Security Act must establish and maintain procedures, in consultation with Indian tribes, for the transfer of responsibility for the placement and care of a child to a tribal Title IV-E agency, or an Indian tribe with a Title IV-E Agreement. The transfer of a child's case should not affect the child's eligibility, receipt of

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services, or payments under Title IV-E or the Medical Assistance program operated under Title XIX.

The tribe of an Indian child has the right to intervene at any time in a child custody proceeding in State court. Upon the transfer of a child from state court to tribal court, county agencies should follow current procedures or develop procedures, in consultation with the tribe, that ensure the following:

1. Title IV-E is established at the time of transfer, if it has not already been determined.
2. Essential documents and information necessary to continue a child's eligibility under Title IV-E and Medicaid programs under Title XIX are provided in a timely manner to the tribal Title IV-E agency, or an Indian tribe with a title IV-E Agreement, including but not limited to:
 - a. All judicial determinations to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts to prevent removal and return the child home were made, and that reasonable efforts have been made to place siblings in the same home or provide for frequent visitation or other ongoing interaction between siblings when it is not possible to place them together;
 - b. Other documentation the county social service agency has that relates to the child's Title IV-E eligibility;
 - c. Information and documentation available to the county social service agency regarding the child's eligibility or potential eligibility for other federal benefits;
 - d. The case plan, including the child's health and education records; and,
 - e. Information and documentation of the child's placement settings.

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Role of DHS/CFS 447-10-40-15-10
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Financial responsibility for foster care maintenance payments shall be 100% federal and state.

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**Native American Parents Living Off an Indian Reservation
When the Child Enters Foster Care 447-10-45**

Financial Responsibility 447-10-45-05

(Revised 5/15/07 ML #3087)

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There are no special provisions for financial responsibility for a Native American child who enters foster care when his/her primary caretaker parent(s) is living off the reservation.

The county is responsible to determine foster care eligibility the same as for any other child. The custodian is responsible to provide all individual and family information to the eligibility staff so proper foster care eligibility can be determined. Financial responsibility is shared between federal, state, and county governments based on eligibility.

There is no NA or NR matching symbol within this category.

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Alien Eligibility for Title IV-E 447-10-50
(Revised 1/1/25 ML #3887)

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(Applies to All Children in Foster Care)

Title IV-E agencies are required to verify the citizenship or immigration status of all children receiving Federal foster care maintenance payments, adoption assistance payments, or independent living services.

Title IV-E agencies are not required to verify the citizenship or alien status of foster or adoptive parent, with one exception. Title IV-E agencies must verify the citizenship or immigrant status of potential foster or adoptive parents when placing a qualified alien child who entered the United States on or after 8/22/96 and has been in the United States as a qualified alien for less than five years. In order to be exempt from the five year residency requirement imposed at section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act, a qualified alien child must be placed with a citizen or a qualified alien; hence, citizenship/alien status of prospective foster or adoptive parents must be verified in such circumstances.

Title IV-E eligibility excludes certain aliens such as undocumented aliens or aliens legally admitted on a temporary basis for work, study, or pleasure.

The U.S. Citizenship requirement is met if an individual is one of the following:

- A person (other than the child of a foreign diplomat) born in one of the States or in the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands who has not renounced or otherwise lost his or her citizenship;

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- A person born outside of the United States to at least one U.S. Citizen parent (sometimes referred to as “derivative citizen”);
- A naturalized U.S. citizen; or
- A U.S. non-citizen national, a person born in American Samoa or Swain’s Island on or after the date the U.S. acquired them, or a person whose parents are U.S. non-citizen nationals (subject to certain residency requirements).
- A Freely Associated States (FAS) citizen (who are otherwise otherwise eligible for Title IV-E) residing in the United States is considered a “qualified alien” (8 U.S.C. §§1612 and 1641). In addition, the law exempts FAS citizens from having to have lived in the United States as a qualified alien for five years. The Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, are collectively referred to as the Freely Associated States (FAS).

The date the child entered the United State is irrelevant for a child who is a qualified alien and is placed with a qualified alien or United States citizen.

A “**Qualified Alien**” is a person who, at the time of application, is:

1. An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act;
2. An alien granted asylum under section 208 of such Act;
3. A refugee admitted to the U.S. under section 207 of such Act;
4. An alien who is paroled into the U.S. under section 212(d)(5) of such Act for a period of at least one year;
5. An alien whose deportation is being withheld under section 243(h) of such Act, as in effect immediately before April 1, 1997, or section 241(b)(3) of such Act;
6. An alien who is granted conditional entry pursuant to section 203(a)(7) as in effect prior to April 1, 1980;
7. An alien who is a Cuban or Haitian entrant (as defined in section 501(3) of the Refugee Education Assistance act of 1980); or
8. An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the U.S. (See Exhibit B to Attachment 5 of the Department of Justice Interim Guidance, 62 fed. Reg. 61344 (Nov. 17, 1997) for the requirements that must be met for an alien to fall within this category of qualified alien).

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Because of the complexity of rules regarding citizenship and alien status, staff are urged to seek supervisory and Departmental expert advice when addressing questions that may arise as to these issues.

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Verifying Citizenship 447-10-50-05
(Revised 1/1/25 ML #3888)

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The process of verifying an individual's status as a U.S. citizen, U.S. non-citizen national, or qualified alien involves privacy and anti-discrimination protections. Federal guidance is that no verification of an applicant's status should be undertaken where benefits are not contingent on such status. Therefore, whenever there are indications that the child is not likely to be foster care eligible for other reasons, citizenship/qualified alien verification should not be pursued.

A child must be either a United States citizen by birth or naturalization, or must be a qualified alien. U.S. citizenship follows that of the child's U.S. citizen parent(s) or is established by being born in this country. Children who are in the U.S. under a visitor or tourist visa or under a student arrangement are not eligible for foster care.

Qualified alien status must be verified through the Immigration and Naturalization Services verification process utilizing the information on the Alien Registration Card designated as I-94.

The procedures to be followed for determination of citizenship/qualified alien status during the initial Title IV-E eligibility process are as follows:

STEP 1:	Request that the parent or the child's representative complete SFN 641 indicating that the child is a U.S. citizen or an alien, and sign the form under penalty of perjury. File this completed form in the child's eligibility record.
STEP 2:	Request that the parent or child's representative provide evidence of the child's citizenship, e.g., a copy of the

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	<p>child's birth certificate, hospital birth record, U.S. consular report of birth, U.S. passport, a Certificate of Citizenship, or a Certificate of Naturalization. Keep a photocopy of such evidence in the child's eligibility record.</p>
STEP 3:	<p>If the child is an alien, request that the parent or child's representative provide a copy of a current document issued by the U.S. Immigration and Naturalization Services (INS), such as Form I-551, I-94, I-688B, or I-766. Contact the INS to verify that the immigration status is current and that it indicates citizenship or qualified alien status. Eligibility staff can verify citizenship or alien status by using the Verification of Citizenship or Alien Status – Systematic Alien Verification for Entitlements (SAVE) in accordance with Service chapter 449-05-25. Record the INS response in the child's eligibility record.</p>
STEP 4:	<p>If the child is otherwise Title IV-E eligible and reimbursable, but does not meet the citizenship/qualified alien test, note this fact at the bottom (end) of SFN 869. Also, record the citizenship status of the child and family members on SFN 641 where indicated.</p>

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18+ Continued Foster Care Eligibility 447-10-52
(Revised 7/1/24 ML #3841)

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The 18+ Continued Foster Care program referred to as 18+ program for this section, is available to eligible children in foster care up to the age of 21 if the child meets certain criteria. The child must have aged out of foster care while in the custody of a North Dakota public agency including human service zone, Tribal Nations and the Division of Juvenile Services (DJS).

An 18+ child continuing in or returning to the 18+ program is defined in NDCC 27-20.3 as an individual between the ages of eighteen and twenty-one years of age in need of continued foster care services.

When the child turns 18, the court order for which the child was a subject of a child in need of protective services (CHIPS) will terminate and the child will be discharged from further obligation or control (NDCC 27-20.3-26). The court order for a child that is the subject of an active adjudicated delinquency order does not terminate until the court order expires or is vacated. The child will remain ineligible for the 18+ program until the court order expires.

The case managing agency is responsible to ensure the child meets the criteria of the 18+ program and follows the program requirements for continued participation. The SFN 60 18+ Continued Foster Care Agreement must be signed by the child, the agency, and the foster care provider.

Dependent Child - Title IV-E Only

A child must meet the definition of a dependent child to be eligible under Title IV-E in the 18+ program. A dependent child is defined as one of the following:

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- a child who is currently attending high school or has completed high school, or,
- is working to complete or has obtained their GED, or,
- was/is in an equivalent level of vocational/technical training.

The child must have graduated or completed one of the above before attaining age 19. A child that drops out of school or does not complete training prior to age 19 is not eligible for Title IV-E.

Title IV-E eligibility ends on the last day of the month in which:

1. the child leaves school, or,
2. the title IV-E agency determines the youth will not complete the educational program before reaching age 19, or,
3. an otherwise eligible youth turns 19, whichever occurs earlier.

Children under the custody of Division of Juvenile Services

ND law prohibits the Division of Juvenile Services (DJS) from case managing a child who is not in their court ordered custody. The child must be referred to a human service zone if the child wishes to continue in or return to the 18+ program.

Children under the custody of a Tribal Nation

The Title IV-E agreements with Standing Rock Sioux Tribe, Three Affiliated Tribes, Turtle Mountain Band of Chippewa and Spirit Lake Sioux Tribe allow the Tribal Nation to retain jurisdiction of children interested in participating in the 18+ Continued Foster Care program. The Tribal Nation remains responsible to:

- a. Provide case management to the child.
- b. Provide all documentation for eligibility determination to the Foster Care and Subadopt (FCSA) Eligibility Unit.
- c. Report changes to the child's income and assets for ongoing reimbursement.

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- d. Provide CFS Field Service Specialists and FCSA Eligibility Unit with required case documentation for entry into the case management system.

A child under the custody of a Tribal Nation at the time they age out of foster care must continue with or return to the same agency to participate in the 18+ program. A child cannot be referred or transferred to a human service zone for the purpose of entering the 18+ program.

Eligible maintenance payments for an 18+ child will be authorized by the FCSA Eligibility Unit and paid by the state.

1. Tribal Title IV-E

A Title IV-E child under the custody of a Tribal Nation who meets the definition of a dependent child at the time they age out of foster care, is eligible to participate in the 18+ program.

A Title IV-E child that drops out of school, does not obtain a GED, or does not complete vocational/technical training in place of graduating from school prior to turning age 19 is not eligible for Title IV-E and would not be eligible to participate in the 18+ program.

2. Tribal Non-Title IV-E

A child under the custody of a Tribal Nation, who was not Title IV-E eligible upon "aging out", may qualify for the 18+ program. The child must apply and have their eligibility determined. The child must meet the definition of a dependent child upon entering the 18+ program. If determined to be Title IV-E eligible as "child only", the child would be eligible to participate in the 18+ program. If the child loses Title IV-E eligibility or is no longer reimbursable while participating in the 18+ program, the FCSA Eligibility Unit will close the case and the state will no longer be financially responsible.

Placement and Care

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The 18+ Continued Foster Care Agreement (SFN 60) allows for a bridge in service and payment. The eligibility determination at the time the child ages out of foster care will determine the effective date of the agreement.

Title IV-E Eligible Child:

- Continued foster care date = day before their 18th birthday.
- Returned to foster care date = day returned to foster care.

Not Title IV-E Eligible Child:

- New foster care date = day after current court order expired.
- Return to foster care date = day returned to foster care.

The agreement authorizes the agency placement and care responsibility until a formal court order can be obtained.

An 18+ permanency court order addressing the permanent plan for the child and authorizing placement and care responsibility to the agency must be obtained within 90 days of the effective date of the 18+ Continued Foster Care Agreement.

Eligibility Month

The month of the effective date on the SFN 60, 18+ Continued Foster Care Agreement, is considered the removal month for a child that requires a new eligibility determination.

AFDC Income and Assets

The income and assets available to an 18+ child must be considered in the eligibility month when determining eligibility for 18+ Continued Care. An 18+ child is considered an AFDC unit of one unless the 18+ child has a dependent child, not under the custody of a public agency, living with them. The dependent child of the 18+ child is counted as a dependent in the household.

Exclusions:

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- The income and assets of an applicant in receipt of SSI. If the applicant is the child in foster care, they are counted in the AFDC unit, but their income and assets are excluded.
- The earnings of a dependent child who is a full-time student in high school or in an equivalent level of course of study or vocational/technical training.

See Manual Chapter 447-10 AFDC Relatedness for additional exclusions.

If a child's available net income exceeds the daily foster care rate, reimbursement may still exist since the needs of the child include costs other than basic maintenance.

Dependent Children of 18+ Child

A dependent child, not under the custody of a public agency, living with the 18+ child is counted in the AFDC family unit. Both the 18+ child and the dependent child would be counted as dependent children when determining financial need under AFDC.

Student Status

1. A child participating in Job Corps is a student.
2. A child is considered in regular attendance for the months in which he/she is not in school because of official vacation, illness, or convalescence if the plan is to continue training when the event that prompted the interruption has run its course.
3. A child is considered a dependent child during the entire month of his/her 18th birthday.
4. A child is no longer considered a dependent child the month after one of the following occurs:
 - a. They turn 18 and are no longer attending high school or an equivalent course of study.
 - b. They graduate from high school or an equivalent course of study before turning age 19.
 - c. They turn 19 and are still attending high school or an equivalent course of study.

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5. The terms "full-time" and "part-time" school attendance are defined as follows:
- a. "Full-time" attendance in a secondary school (high school) requires four or more units of credit. "Part-time" is anything less than four units of credit.
 - b. "Full-time" attendance in college or university requires 12 or more semester or quarter hours and "part-time" is less than 12 semester or quarter hours. Full time summer school normally means one-half of the semester hours earned during a regular quarter or semester.
 - c. "Full-time" in a vocational/technical school, under state operation, means 12 or more semester or quarter hours, and "part-time" is less than 12 semester or quarter hours. There is no uniform defined criteria of what constitutes full or part-time attendance in private vocational/technical schools such as for auto mechanics, auto body repair, hair stylists, etc.

18+ Permanency Court order

All children continuing in or returning to the 18+ program must have a permanency hearing within 90 days of the effective date of the 18+ Continued Foster Care Agreement (SFN 60). A child will not be reimbursable starting on the 91st day if the agency fails to obtain an 18+ permanency court order within 90 days. Reimbursement may resume effective the day the hearing is held granting placement and care responsibility to the agency.

For a Title IV-E eligible child transitioning from regular foster care to the 18+ Continue Foster Care program, the requirement of timely permanency findings does not change. Permanency findings must be obtained 12 months from the date the child is considered to have entered foster care or 12 months from the last permanency hearing.

A child that is not Title IV-E eligible at the time they age out of foster care must be discharged from the foster care program and the case closed. The foster care discharge date must be equal to the date the child ages out of foster care and is no longer under the custody of the agency. Permanency

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findings are required within 12 months from the effective date of the child's return to care.

For payment purposes, the 18+ permanency court order must include:

1. The child willfully entered the 18+ Continued Foster Care Agreement.
2. A judicial determination that it is in the best interest for the child to remain in or return to foster care.
3. A judicial determination the agency has made reasonable efforts to meet the youth's needs before a foster care placement.
4. Permanency goal for the child.
5. Permanency Hearing: A judicial determination the agency has made reasonable efforts to finalize the permanency plan specific to the youth.
6. Placement and care responsibility to the agency.

Eligibility Determination

All 18+ eligibility determinations require the following:

1. A current 18+ Continued Foster Care Agreement (SFN 60)
2. Continued Eligibility
 - a. Title IV-E: If the child was previously Title IV-E, no redetermination is necessary. However, income and assets must be reviewed to determine if the child is reimbursable.
 - b. Non-Title IV-E: If the child was not previously Title IV-E eligible prior to aging out, a new eligibility determination is required specific to the child only.

Based on the child's determination, the following documents are required:

Title IV-E children

1. Remain in ND 18+ Continued Care:
 - a. Child remains Title IV-E eligible
 - b. A new determination is not required, but income and assets must be monitored for continued reimbursement.
 - c. Additional documentation in the eligibility file must include:

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- i. SFN 60, 18+ Continued Foster Care Agreement
- ii. SFN 45, Notice of Change
- iii. 18+ Permanency Court Order
- iv. SFN 642, Title IV-E Title XIX Income/Asset Report

2. Return within six months of discharge:

- a. Child remains Title IV-E eligible.
- b. Reimbursement must be established.
- c. Additional documentation in the eligibility file must include:
 - i. SFN 641 Title IV-E Title XIX Application – Foster Care specific to the 18+ Continued Care eligibility month and signed by the child.
 - ii. SFN 870, Title IV-E 18+ Continued Care Eligibility
 - iii. SFN 873, Title IV-E Income Calculation Worksheet if child has income
 - iv. SFN 60, 18+ Continued Foster Care Agreement
 - v. SFN 45, Notice of Change
 - vi. 18+ Permanency Court Order

Non-Title IV-E children aging out of foster care

All non-IV-E children must be discharged from the foster care program upon aging out of foster care. A child must “return” to foster care if they wish to participate in the 18+ program. The child must apply for 18+ Continued Foster Care and a new eligibility determination is required.

1. Return to 18+ Continued Care:

- a. Additional documentation in the eligibility file must include:
 - i. SFN 641 Title IV-E Title XIX Application – Foster Care specific to the 18+ Continued Care eligibility month and signed by the child.
 - ii. SFN 870, Title IV-E 18+ Continued Care Eligibility
 - iii. SFN 873, Title IV-E Income Calculation Worksheet if child has income
 - iv. SFN 60, 18+ Continued Foster Care Agreement

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- v. SFN 45, Notice of Change
- vi. 18+ Permanency Court Order

Reimbursement

To maintain reimbursement the child must have a financial need in AFDC terms. Need has two elements:

- The income available to the child must be less than the costs of maintaining the child.
- Assets cannot exceed \$10,000 in non-exempt assets

The cost of maintaining the child is the amount the state is paying for the foster care placement of the child. In any month where the child's income after deductions exceeds this amount, the child is not reimbursable.

Reviews

A change in the child's status, income, and/or assets could affect eligibility and/or reimbursement. The eligibility worker must send an SFN 642 Title IV-E Title XIX Income/Asset form to the responsible agency for completion every three months. Reviews are due within 30 days of the period under review. If they are not received within 30 days after the review period, payment will not be made until it is received.

A Title IV-E child that met the definition of a dependent child at the time of the eligibility determination but has dropped out of school or training and is no longer expected to graduate or complete a training program prior to turning 19, is no longer eligible or reimbursable under Title IV-E. The change in the eligibility status will take effect the first of the month following the status change. Eligibility will continue under regular foster care and a match symbol change is required in the payment system from FM to RM. Children under the placement and care of a Tribal Nation will no longer be eligible or reimbursable through the state.

The income and assets of a child in the 18+ program must be reviewed every three months. A child's monthly earned and unearned income that exceeds the monthly standard maintenance rate or if the child's assets

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exceed the asset maximum of \$10,000 are not reimbursable under Title IV-E. Regular state funds must be used in any month in which the income and/or assets exceed the allowable limits. For tribal children, the Tribal Nation will be responsible to reimburse the provider when income or assets exceed the allowable limits.

Medical Services

The Foster Care Application (SFN 641) must be completed to reinstate Medicaid for children who exit and return to foster care after age 18. Title IV-E Title XIX Income/Asset Report (SFN 642) may be used to re-determine Medicaid annually for children who remain in foster care past the child's 18th birthday. Children who are discharged from foster care at or after age 18 are eligible for Medicaid until the age of 26.

Additional 18+ Policy: 18+ Continued Care program policy can be found in 624-05 and 18+ maintenance payment policy can be found in 623-05.

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Eligibility Process 447-10-55-05
(Revised 1/1/24 ML #3784)

[View Archives](#)

The eligibility determination process requires a full kit that consists of:

- [SFN 630](#) - Foster Care Placement Notification
- [SFN 641](#) - Title IV-E Title XIX Application - Foster Care
- Valid initial removal court order along with incorporated affidavit or petition

The documents must be sent to the FCSA Eligibility Unit.

The parents or guardian from the child was legally removed is responsible for completing the Title IV-E/Title XIX Application-Foster Care form, [SFN 641](#). If the parents or guardian fail to complete and return the application timely, the case worker must follow-up with the parents or guardian to assist in completing the application and to secure the needed information. As a last resort, if the parents or guardian are uncooperative or refuse to complete the application, the case worker may complete the application on the family's behalf; which may result in the child being determined non-Title IV-E eligible due to unknown information.

The custodial agency should strive to obtain the completed forms and court orders for submission to the FCSA Eligibility Unit within 15 days from the date of removal. If the agency is not able to timely obtain the required information, the agency will have up to 45 days to obtain the missing information. Cases that cannot be determined due to lack of information will be returned to the custodial agency with explanation after 45 days has elapsed from the date the first document was received. Once all required information and documentation has been obtained, the agency may submit the full kit again to the FCSA Eligibility Unit.

Eligibility is determined using the Title IV-E eligibility determination forms:

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- [SFN 869](#) - Title IV-E Initial Eligibility
- [SFN 873](#) - Income Calculation Worksheet

Eligibility determination must be completed using the Title IV-E eligibility criteria for all children entering foster care. Eligibility is based on the July 16, 1996, AFDC Rules. A child that is not eligible under Title IV-E must then be determined under Emergency Assistance criteria. If the child does not meet either Title IV-E or Emergency Assistance, then determination is completed under regular foster criteria. Once eligibility has been determined, the eligibility staff will enter and authorize the payment on the payment system and authorize Medical Assistance coverage as appropriate. A child that is Title IV-E eligible considered "categorically" Medicaid eligible. The Medicaid worker will authorize the Medicaid accordingly. If the child is not eligible under Title IV-E, a Medicaid determination must be made according to the Medicaid guidelines.

For children entering or returning to the 18+ program, see 447-10-52

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Right to Appeal and Fair Hearing 447-10-55-10
(Revised 4/1/24 ML #3809)

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Any person who is dissatisfied as the result of an action taken or not the North Dakota Department of Health and Human Services with respect to their application is legally entitled to appeal for an impartial review of the circumstances through the fair hearing procedure (N.D.A.C. Chapter [75-01-03](#)).

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Child Support 447-10-60
(Revised 4/1/24 ML #3809)

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Federal law requires states to take all necessary steps to enforce the assignment of support rights and, if necessary, establish support orders on behalf of children receiving foster care. N.D.C.C. [§50-09-06.1](#) provides that all support obligations are automatically assigned to the state. The assignment is not conditioned upon the consent of the parents.

For the purpose of this Chapter "parent(s)" is defined as the natural parent(s), adoptive parent(s), or guardian legally responsible for the support of the child.

A referral to Child Support is made against each parent when a child is eligible for foster care, with the following exceptions. A referral will not be made against a parent:

1. If one or both parents receive a subsidized adoption payment on behalf of a child in foster care, or
2. If the child's placement was short-term. For purposes of this exception, "short-term" is defined as follows:
 - a. The child exited the placement by the time the referral would be sent, and
 - b. The child was in the placement for 60 days or less.
3. If the foster care permanency goal is reunification with the parent.

Both criteria in 2. a and b must be met for the referral to be eliminated (i.e., not made). If the foster care permanency goal changes from reunification with the parent to another permanency goal, a referral will be required prior to authorizing the next payment.

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Good Cause for Refusing to Cooperate 447-10-60-05
(Revised 4/1/24 ML #3809)

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A parent must be given the opportunity to claim a "good cause" exemption upon request. This is accomplished by providing the parent with an [SFN 443](#), Notice of Right to Claim 'Good Cause', at time of application. The notice briefly summarizes the legislative intent of the Child Support program, defines the parent's responsibility to cooperate in the support enforcement effort, and provides a detailed explanation of the procedure for filing an exemption if the individual is interested in pursuing this course of action. The parent shall be given sufficient time to read the notice(s) and raise questions before signing. Any parent wishing to claim a "good cause" exemption shall so indicate in writing by completing the [SFN 446](#), Request to Claim 'Good Cause'.

EVIDENCE NEEDED TO ESTABLISH GOOD CAUSE - There must be evidence to substantiate a claim of "good cause." **Exemptions on the basis of physical or emotional harm, either to the child or to the parent, which in turn could be expected to reduce his or her capacity to care for the child, would be allowed only for circumstances of a genuine and serious nature.** Mere belief that cooperation might result in harm is not a sufficient basis for finding "good cause." Evidence upon which the human service zone bases its finding on the "good cause" issue must be supported by written statements.

Note: Do not invoke good cause based on an assessment of the family's financial situation. Continue to refer cases even if there seems to be a financial burden on the family. It is the responsibility of Child Support to always take into account the financial situation when they work the case.

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It is the parent's responsibility to provide the human service zone with the evidence needed to establish "good cause." The supporting documentation must be received within 20 days from the date the parent signs the [SFN 446](#), Request to Claim "Good Cause." The human service zone may grant reasonable additional time to allow for difficulty in obtaining proof of rape, physical harm, or pending adoption. Documentation of anticipated emotional harm to the child or parent, however, may be somewhat more elusive. Whenever the claim is based in whole or in part on anticipated emotional harm, the human service zone shall consider the following:

1. The present emotional state of the individual subject to emotional harm;
2. The emotional health history of the individual subject to emotional harm;
3. Intensity and probable duration of the emotional impairment;
4. The degree of cooperation to be required; and
5. The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.

HUMAN SERVICE ZONE ROLE IN OBTAINING EVIDENCE - Upon request, the human service zone is required to assist the parent in obtaining evidence necessary to support a "good cause" claim. This, however, is not intended to place an unreasonable burden on staff by allowing the claimant to require a "fishing expedition" in order to delay or frustrate a final determination. The human service zone's obligation to assist in this process, if requested, does not shift the parent's basic responsibility to produce evidence to support the claim. Additionally, the staff is expected to actively assist in obtaining evidence when the individual is not reasonably able to obtain it.

The human service zone is obligated to assume direct responsibility for investigating a "good cause" claim when it believes that the parent's claim is authentic even though confirming evidence may not be available. This need may occur when the claim is based on a fear of serious physical harm and the claim is believed by agency staff. Such investigation will be conducted without requiring corroborative evidence by the parent and may involve a careful review of the case record, evaluation of the credibility of the parent's statements, and/or a confidential interview with an observer

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who has good reasons for not giving a written statement. Based on such an investigation and on professional judgment, the human service zone may find that "good cause" exists without the availability of absolute corroborative evidence.

During an investigation of a "good cause" claim, care must be taken to ensure that the location of the child is not revealed. In some circumstances, contact with the absent parent or alleged father may be deemed necessary to establish the claim. Before doing so, however, the parent must be notified of this in order to be afforded the opportunity to (1) present additional information that makes contact with the absent parent unnecessary, or (2) have the "good cause" claim denied.

"GOOD CAUSE" CLAIMS TO BE PROCESSED PROMPTLY - Except for extenuating circumstances, the "good cause" issue must be determined with the same degree of promptness as for the determination of other factors of AFDC eligibility (45 days). The human service zone may not deny, delay, or discontinue assistance pending the resolution of the "good cause" claim. In the process of making a final determination, the human service zone is required to give Child Support the opportunity to review and comment on the findings and basis for the proposed decision. It is emphasized, however, that responsibility for the final determination rests with the human services zone after consultation with supervisory and Child Support.

CHILD SUPPORT TO BE KEPT INFORMED OF "GOOD CAUSE" STATUS - It is essential that Child Support is informed on the status of all "good cause" claims. This includes:

1. Promptly notifying Child Support of all parents who claim "good cause" exemptions and requesting suspension of child support activity pending a determination;
2. Promptly reporting to Child Support all cases in which it has been determined that there is "good cause" for refusal to cooperate. If good cause is claimed, it temporarily suspends the effort of the child support unit to recover any costs expended for the child's care, for the period when good cause is in effect. It does not forgive those obligations. If good cause no longer exists, or the child returns home,

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the child support unit has an obligation to make recovery efforts for those funds expended while good cause was in effect; and

3. Promptly notifying Child Support of all cases in which it has been determined that "good cause" for refusing to cooperate does not exist and that child support enforcement activity can begin or resume.

CLAIMANTS OF "GOOD CAUSE" TO BE INFORMED OF DECISION - **The parent claiming good cause must be advised, in writing**, of the human service zone's final decision that "good cause" does or does not exist and the basis for the findings. A copy of this communication shall be placed in the file. If "good cause" was determined not to exist, the communication must remind the parent of the obligation to cooperate with the child support effort. It must also advise him/her of the right to appeal this decision. In the event the parent does appeal, Child Support shall be advised to delay its activity until the results of the appeal are known.

PERIODIC REVIEW OF "GOOD CAUSE" CLAIMS - The human service zone is required to review, not less frequently than **EVERY 6 months**, cases in which "good cause" was previously found to exist. Rather than routinely conducting full scale re-reviews on every case, however, a complete follow-up needs to be done on only those in which the original finding of "good cause" was based on a circumstance that is subject to change. If it is found that circumstances have changed so that "good cause" no longer exists, the recipient shall be so advised in writing. If "good cause" is found to continue to exist, the claimant must again be informed in writing.

Once the child support unit collects all the funds that were expended while good cause was in effect, any remaining child support that is collected is paid out on behalf of the child. For a family where both parents reside together, the remaining unassigned child support can be forgiven by court order.

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**Prompt Referral to Child Support Enforcement Agency
447-10-60-10**

(Revised 4/1/24 ML #3809)

[View Archives](#)

The Department of Health and Human Services uses automated systems to transmit and receive referrals. The referral information sent to Child Support is used to establish paternity, locate the absent parent(s), and establish and enforce a support order. The referral may be transmitted by the Foster Care and Subadopt Eligibility Unit to Child Support at any time following placement, but must be transmitted at time of initial payment authorization, at the latest.

Upon receipt of the referral, Child Support will establish a case and proceed based on the content of the information.

1. If the case is a good cause case, the Child Support will open a case on the child support system and then close the case to IV-D services.
2. If good cause does not exist, the Child Support will proceed to provide the child support services to enforce the assignment of support rights including, if necessary, establishing support orders on behalf of children receiving foster care. N.D.C.C. [§ 50-09-06.1](#).

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Forms 447-10-70
(Revised 11/1/10 ML #3249)
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All foster care forms are available electronically via [E-Forms](#). If the forms are completed properly, the eligibility staff will be able to correctly determine eligibility.

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**Foster Care Placement Notification, SFN 630
447-10-70-05**

(Revised 5/30/19 ML #3550)

[View Archives](#)

SFN 630 is a mandatory form to be completed by the case manager designed to notify the eligibility staff when a child has entered foster care. The form provides child, parent, placement, court order and residence specific information. A copy of the pertinent court documents should be attached when submitting to the eligibility worker. This form is used by the eligibility worker in conjunction with the SFN 641, Title IV-E Title XIX Application-Foster Care in determining foster care eligibility.

This form is available electronically via E-Forms.

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**Title IV-E/Title XIX Application, SFN 641 447-10-70-10
(Revised 4/20/2017 ML #3505)**

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The SFN 641 is a mandatory form and serves a dual purpose of a foster care eligibility application and a Medicaid application.

The parent or legal guardian of the removal home is responsible for completing the SFN 641. Agencies should make every effort through face to face contact, telephone calls, and, if necessary, by order of the court to obtain the information from the parent or guardian of the legal removal home. If all efforts fail and there is still no cooperation, as a last resort the case manager may complete the application on behalf of the family.

Eligibility staff must utilize the information on the completed form to assist in eligibility determination for Title IV-E foster care and Title XIX Medicaid.

This is a fillable and savable form and can be found on the North Dakota State E-Forms site <http://www.state.nd.us/eforms/>.

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**Title IV-E Initial Eligibility Worksheet, SFN 869
447-10-70-20**

(Revised 5/15/07 ML #3087)

[View Archives](#)

This mandatory ([SFN 869](#), Title IV-E Initial Eligibility Worksheet) form is completed once, at every child's entry to foster care, to determine eligibility for federal funds.

This form is available electronically via E-Forms.

<http://www.state.nd.us/eforms/>

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**Title IV-E 18+ Continued Care Eligibility, SFN 870
447-10-70-25**

(Revised 11/1/19 ML #3565)

[View Archives](#)

This mandatory form ([SFN 870](#), Title IV-E 18+ Continued Care Eligibility) is completed to assist in determining eligibility and reimbursability of 18+ youth continuing and returning to the 18+ Continued Foster Care program.

This form is available electronically via E-Forms.

<http://www.state.nd.us/eforms/>

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**Title IV-E Income Calculation Worksheet, SFN 873
447-10-70-30**

(Revised 11/1/10 ML #3249)

[View Archives](#)

SFN 873, Title IV-E Income Calculation Worksheet, is completed when the child's family has earned/unearned income and a copy put in the eligibility file.

This form is available electronically via E-Forms.

<http://www.state.nd.us/eforms/>

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Notice of Change Forms, SFN 45 447-10-70-40
(Revised 4/25/17 ML #3502)

[View Archives](#)

The Notice of Change, SFN 45, is a required form which must be completed by the foster care case manager when changes occur in the child's case; including placement, foster care status, and parent information.

The intent of this form is to quickly update/alert the eligibility worker to make payment authorization adjustments accordingly. Overpayments will occur if the eligibility worker is not notified by the foster care case manager of a placement/status change.

Eligibility staff must forward a copy of the completed form to Child Support if there is a change in health information or parent information.