

TITLE IV-E ADOPTION ASSISTANCE
State Self-Assessment

**Developed by the Department of Health and Human Services,
Administration for Children and Families, Children's Bureau**

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TITLE IV-E ADOPTION ASSISTANCE State Self-Assessment

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Introduction

In order for a State to be eligible to claim Federal financial participation (FFP) for its title IV-E adoption assistance program, it must, in part, have a title IV-E State plan which provides for adoption assistance in accordance with section 473 of the Social Security Act (the Act). The title IV-E State plan must be approved by the Secretary of the Department of Health and Human Services for FFP to be claimed under the plan. All relevant changes to State law, administrative rule, policy, etc., which impact title IV-E adoption assistance must be submitted to the appropriate Regional Office as an amendment to the State's title IV-E State plan.

The title IV-E adoption assistance program self-assessment tool was developed by the Department of Health and Human Services, Administration for Children and Families (ACF), Children's Bureau (CB), to provide a process by which State title IV-E agencies may voluntarily review their title IV-E adoption assistance programs. The self-assessment tool is intended only for internal use by State title IV-E agencies. This tool is **not** a Federal requirement and States are not required to complete it. We do hope, however that States will take advantage of the document and that the self-assessment will serve as a useful tool for the State to identify whether State laws, regulations, policies and procedures should be modified to meet Federal requirements. It should be noted that the self-assessment tool covers the general rules related to title IV-E adoption assistance eligibility and that only the requirements in statute, regulations and the Child Welfare Policy Manual are formal statements of Federal law or policy. Case-specific inquiries should be directed to the State's appropriate Regional Office.

Using the self-assessment tool does not preclude ACF from conducting a partial review in accordance with Federal regulations at 45 CFR 1355.32(d). However, we believe that a State's better understanding of the Federal requirements for the title IV-E adoption assistance program will enable the State to proactively make any necessary changes to assure consistency with the title IV-E adoption assistance program.

Statutory Background

The *Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272)* establishes the Federal title IV-E adoption assistance program which provides matching funds to States operating a program of subsidies for parent(s) who adopt children with special needs who were either eligible for Aid for Families with Dependent Children (AFDC) or Supplemental Security Income (SSI).

The *Tax Reform Act of 1986 (P.L. 99-514)* provides Federal matching funds to States that reimburse parents nonrecurring expenses of adopting a child with special needs.

The *Omnibus Budget and Reconciliation Act of 1987 (P.L. 100-203)* amended the title IV-E adoption assistance eligibility criteria to include certain children who are voluntarily placed in foster care, as well as certain children who lived with his/her minor parent who was in foster care.

The *Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), as amended*, links a child's eligibility for the title IV-E programs to meeting criteria in a State's former AFDC plan, as in effect on July 16, 1996.

The *Adoption and Safe Families Act of 1997 (P.L. 105-89)* provides that title IV-E adoption assistance-eligible children retain their eligibility for such assistance in a subsequent adoption if the adoptive parent(s) die or the adoption dissolves with a termination of parental rights and the child remains a child with special needs. It also requires the State to conduct a criminal records check (unless the State opted out) on prospective adoptive parent(s) of children who would receive title IV-E adoption assistance.

The *Foster Care Independence Act of 1999 (P.L. 106-169)* increases the AFDC resource limit from \$1,000 to \$10,000 for title IV-E foster care and title IV-E adoption assistance eligibility purposes.

The *Deficit Reduction Act of 2005 (P.L. 109-171)* clarifies that for title IV-E adoption assistance, a child must meet the July 16, 1996 State AFDC eligibility criteria in the specified relative's home from which s/he is removed. This legislation also eliminates the requirement that a child had to be AFDC-eligible at the time of the initiation of the adoption proceedings.

The *Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248)* requires fingerprint-based FBI background checks for prospective adoptive parent(s) and, in all cases, prohibits the State from claiming title IV-E adoption assistance if the prospective adoptive parent(s) have certain felony convictions. This legislation further requires child abuse and neglect registry checks in each State where each of the adults in the prospective adoptive home have lived in the past five years.

Instructions

To complete the title IV-E adoption assistance State self-assessment tool, we recommend that the State thoroughly review all applicable documents related to its title IV-E adoption assistance program, including adoption statutes, administrative rules, policies, procedures, practice manuals, adoption assistance agreement(s), worksheets used to determine eligibility, brochures, and training materials. The State also should cross-check the documents to assure that there are no inconsistencies among them. We encourage the State to use the self-assessment tool to consult with its appropriate CB Regional Office to address questions or concerns regarding State implementation of the title IV-E requirements.

Each section of the State self-assessment tool provides the requirements and restrictions relating to a specific Federal provision of the title IV-E adoption assistance program. Questions relating to the requirement follow which allow for a response of “YES,” “NO,” or “NEEDS CLARIFICATION.” After each response, there is a statement which informs the State as to whether the State provisions are consistent with Federal guidelines. If the State needs to review and research the question further before determining whether the response is “YES” or “NO,” the “NEEDS CLARIFICATION” selection provides that opportunity. Certain questions allow a response of “N/A” when they involve a provision that is optional. As noted above, States are encouraged to work with their appropriate Regional Office with any questions that are marked “NEEDS CLARIFICATION” to help the State determine whether the State provision(s) are consistent with Federal requirements.

Following the questions in each section of the self-assessment, space is provided for the State to record: 1) steps to address areas needing clarification; 2) any areas where the State’s provisions are inconsistent with Federal requirements; 3) actions needed to assure the State’s program meets Federal requirements; and

4) the citations in State law, administrative rules, policies, etc., used by the State for review of the requirement.

At the end of each self-assessment section, the Federal legal and related references applicable to that section are provided.

*Please note that the self-assessment applies only to requirements for the Federal title IV-E adoption assistance program and does **not** apply to any State-funded adoption assistance program.*

Section I: Special Needs Determination

A child's eligibility for title IV-E adoption assistance is based, in part, on a determination by the State that the child is a child with special needs. A determination of special needs is a three-part requirement established in section 473(c) of the Act. All three parts of the special needs provision must be met in order for a child to be considered a child with special needs. The determination of special needs must be made by the State prior to the finalization of the adoption¹. Those three parts are as follows:

- 1) The child cannot or should not be returned to the home of his or her parent(s);
- 2) There exists a specific factor or condition which makes it reasonable to conclude that the child cannot be adopted without providing title IV-E adoption assistance or title XIX medical assistance; and
- 3) The State must make a reasonable, but unsuccessful, effort to place the child for adoption with appropriate adoptive parent(s) without providing adoption assistance. The only exception to this requirement is in situations where it would be against the best interests of the child due to such factors as the existence of significant emotional ties with the prospective adoptive parent(s) while in their care as a foster child, or adoption by a relative (in keeping with the statutory emphasis on the placement of children with relatives).

The following provides the specific Federal requirements for each of the three parts of a determination of special needs and follows with questions to help the State assess whether its program is consistent with the requirements:

(1) The child cannot or should not be returned to the home of his or her parent(s): This determination can be based on evidence by an order from a court of competent jurisdiction that terminates parental rights, the existence of a petition to the court for a termination of parental rights (TPR), or a signed relinquishment by the parent(s). In addition, if a child can be adopted in accordance with State or Tribal law without a TPR or relinquishment, the requirement of section 473(c)(1) of the Act can be satisfied as long as the State has documented the valid reason why the child cannot or should not be returned to the home of his or her parent(s).

¹ Please see section IX on Fair Hearings. A favorable fair hearing decision may allow the State to determine after the finalization of the adoption that a child met the special needs criteria prior to finalization.

Questions Specific to this Requirement:

(A)(i) Does the State limit a determination that a child cannot or should not be returned to his or her parent(s) to the following: a TPR; a petition to the court for a TPR; or a signed relinquishment by the child's parent(s)?

YES NO NEEDS CLARIFICATION

(A)(ii) If no, does State law allow adoptions without a TPR, a petition to the court for a TPR, or a signed relinquishment by the parent(s)?

YES NO NEEDS CLARIFICATION

If both (A)(i) and (A)(ii) are no, this is inconsistent with Federal requirements.

(B) Does the State apply any additional criteria for a determination that the child cannot or should not be returned to the home of his or her parent(s)?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

Steps to address areas needing clarification:

List any areas noted above that are inconsistent with Federal requirements:

Action(s) needed to assure the State's program meets Federal requirements:

Citations for State laws, administrative rules, policies, etc., used for review of this requirement:

(2) There exists a specific factor or condition which makes it reasonable to conclude that the child cannot be adopted without providing title IV-E adoption assistance or title XIX medical assistance: Examples in section 473(c)(2)(A) of the Act include a child’s ethnic background, age or membership in a minority or sibling group, the presence of a medical condition, or physical, mental or emotional disability. Each State has the discretion to determine the factors or conditions which make it difficult to place a child without adoption assistance, but the factors or conditions must be similar in nature to those noted in the Act. For instance, the factor or condition cannot have the effect of adding additional eligibility criteria, such as requiring that the State have placement and care responsibility of a child.

Questions Specific to this Requirement:

(A)(i) Does the State make a determination that it is reasonable to conclude that the particular child cannot be placed without providing adoption or medical assistance based on a specific factor or factors/conditions?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(A)(ii) If yes, is the factor or condition similar in nature to the examples in section 473(c) of the Act?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

Steps to address areas needing clarification:

List any areas noted above that are inconsistent with Federal requirements:

Action(s) needed to assure the State's program meets Federal requirements:

Citations for State laws, administrative rules, policies, etc., used for review of this requirement:

(3) The State must make a reasonable, but unsuccessful, effort to place the child for adoption with appropriate adoptive parent(s) without providing adoption assistance. The only exception to this requirement is in situations where it would not be in the child's best interests due to such factors as the existence of significant emotional ties with the prospective adoptive parent(s) while in their care as a foster child. This exception also extends to other circumstances that are not in the child's best interests, including adoption by a relative in keeping with the statutory emphasis on the placement of children with relatives: A State can meet the requirement to make a reasonable effort to place the child without assistance by using adoption exchanges, making referrals to appropriate specialized adoption agencies, or other such activities.

The State must document in each child's case record the specific factor(s) that make the child difficult to place and describe the efforts to place the child for adoption without providing assistance. It should be noted that the State is not required to shop around for a family who will adopt without assistance while a child remains in foster care. Rather, once the agency has determined that placement with a certain family is in the child's best interests, the agency should make full disclosure about the child's background, as well as known or potential problems. If the agency has determined that the child cannot or should not return home and the child meets the statutory definition of special needs with respect to specific factors or conditions, the agency can pose the question of whether the prospective adoptive parents are willing to adopt without assistance.

If they say they cannot adopt the child without adoption assistance, the requirement in section 473(c)(2)(B) for a reasonable, but unsuccessful, effort to place the child without providing assistance will be met.

Questions Related to this Requirement:

(A) Does the State require that a reasonable, but unsuccessful, effort be made to place a child for adoption without providing adoption assistance unless it is against the best interest of the child to do so?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

Steps to address areas needing clarification:

List any areas noted above that are inconsistent with Federal requirements:

Action(s) needed to assure the State's program meets Federal requirements:

Citations for State laws, administrative rules, policies, etc., used for review of this requirement:

Legal and Related References for Special Needs Determination:

- *Sections 473(a)(1)(B), 473(a)(2)(A)(ii), and 473(c) of the Social Security Act*
- *Child Welfare Policy Manual, Section 8.2B.11 (1-2)*

Section II: Pathways to Eligibility

Federal law requires that any child who is determined by the State to be a child with special needs and meets the criteria under one of four pathways to eligibility be eligible for title IV-E adoption assistance (section 473(a)(2)(A) of the Social Security Act (the Act))². The four pathways to eligibility are:

- 1) A child who was eligible for Aid to Families with Dependent Children (AFDC); or
- 2) A child who is eligible for Supplemental Security Income (SSI) benefits; or
- 3) A child who is a child of a minor parent in title IV-E foster care; or
- 4) A child who was eligible for title IV-E adoption assistance in a previous adoption.

The following provides the specific Federal requirements for each of the four pathways to eligibility and follows with questions to help the State assess its compliance with the requirements. Additional eligibility criteria that are not in Federal statute may not be applied to the child.³

(1) A child who was eligible for Aid to Families with Dependent Children (AFDC): Under this pathway, the State must determine that the child would have been eligible for AFDC (pursuant to the State's title IV-A plan as in effect on July 16, 1996) in the specified relative's⁴ home from which s/he is removed in the month of, but prior to, the voluntary placement agreement (VPA) or initiation of court proceedings (petition) to remove the child from his/her home. If there is no petition in a court-ordered removal, then AFDC eligibility is determined in the month of, but prior to, the date of the child's removal in physical removals or the date of the removal order in constructive removals.⁵ For

² See sections III and IV for additional requirements related to criminal background checks and immigration status that must be met for a family to receive title IV-E adoption assistance.

³ Additional eligibility criteria include the three-part special needs determination, criminal records clearances for the prospective adoptive parents and child abuse and neglect registry checks of the prospective parents and any other adult living in the home, and a determination that the child and adoptive parents, if not U.S. citizens, meet the qualified alien provisions of PRWORA.

⁴ For the purpose of title IV-E adoption assistance eligibility, a specified relative is defined as any relation by blood, marriage or adoption who is within the fifth degree of kinship to the dependent child. This includes great-great-great grandparents and first cousins once removed (children of first cousins). (45 CFR 233.90(c)(1)(v))

⁵ A constructive removal is a legal or paper removal of a child who is not living with the specified relative from whom s/he is being removed at the time of removal. See 45 CFR 1356.21(k) for further guidance on this topic.

children who are adopted on or after October 1, 2005, States must determine AFDC eligibility only at the time of the child's removal from the home.⁶

Under this pathway, if a child is removed from his/her home pursuant to a VPA, there must have been at least one title IV-E foster care maintenance payment made on behalf of the child under the VPA in order for the child to be eligible for title IV-E adoption assistance. Therefore, in this situation – and only in this situation – the child must have been under the responsibility for placement and care of the State agency, or another public agency with which the State agency has a title IV-E, section 472 agreement to receive that title IV-E foster care maintenance payment. For the purpose of title IV-E adoption assistance eligibility, there is no specified amount of time that a child must have been in foster care under a VPA and no requirement for a judicial determination within 180 days of placement to the effect that the placement is in the child's best interest.

If a child's removal from his/her home is court-ordered, the removal must be the result of a judicial determination in the first court order removing the child from the home to the effect that to remain in the home would be contrary to the child's welfare.⁷ The child does not have to be under the responsibility for placement and care of the State agency or receive a title IV-E foster care maintenance payment in court-ordered removals. There is no requirement under title IV-E adoption assistance for a "reasonable efforts" judicial determination. That requirement applies only to title IV-E foster care.

Although a condition of eligibility is that the child must be removed from his/her home pursuant to a voluntary placement agreement or a judicial determination that to remain in the home would be contrary to the child's welfare, a child who is relinquished to a public or a private, non-profit agency, or placed with a private, non-profit agency under a voluntary placement agreement can be considered judicially removed under the following circumstances:

- the child is voluntarily relinquished either to the State agency (or another public agency with which the State has a title IV-E agreement), or voluntarily placed with a private, non-profit agency; and

⁶ Prior to that date, the State had to determine that the child continued to be eligible for AFDC at the time of the initiation of adoption proceedings. This requirement was removed by the Deficit Reduction Act of 2005 (P.L. 109-171).

⁷ For children removed from their homes before January 23, 2001 (the date of ACYF-PA-01-01 which established that the timing for the contrary to the welfare determination for title IV-E adoption assistance is the same as for title IV-E foster care), the contrary to the welfare determination is allowed in any court order up to the time of the initiation of adoption proceedings. For children removed on or after that date (1/23/01), the judicial determination must be made in the first court order that sanctions the child's removal from the home.

- there is a petition to the court to remove the child from his/her home within six months of the time the child lived with the specified relative from whom s/he was removed; and
- there is a subsequent judicial determination to the effect that remaining in the home would be contrary to the child's welfare.

Questions Specific to the AFDC Pathway:

(A) When a child's title IV-E adoption assistance eligibility is based on his/her AFDC eligibility, is the child's removal from the home of a specified relative the result of either a voluntary placement agreement or a judicial determination that to remain in the home would be contrary to the child's welfare⁸?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(B) If a child is relinquished to a public or a private non-profit agency, or placed with a private non-profit agency under a voluntary placement agreement, does the State require a subsequent judicial determination that to remain in the home would be contrary to the child's welfare which is initiated within six months of the date the child last lived with the specified relative from whom s/he was removed for title IV-E adoption assistance eligibility?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(C) Does the State determine AFDC eligibility based on the circumstances in the home of the specified relative from which the child is removed – that is, the home of the specified relative who entered into the VPA with the State agency or the home upon which there is a judicial determination regarding contrary to the welfare?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

⁸As noted in the discussion on the previous page, a voluntary relinquishment may be considered a judicial removal if there is a petition to the court to remove the child from his/her home within six months of the date the child last lived with the specified relative from whom s/he was removed and there is a subsequent judicial determination that to remain in the home would be contrary to the child's welfare.

(D) Does the State determine AFDC eligibility based on the circumstances in the child's home in the month of, but prior to, the voluntary placement agreement or petition to the court to remove the child from the home?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(E) After a determination of AFDC eligibility at the time of a child's removal from his/her home, does the State require a redetermination of the child's AFDC eligibility, for title IV-E eligibility purposes, prior to the finalization of the adoption?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(F) Does the State determine financial need based on its AFDC plan as in effect on July 16, 1996?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(G) Does the State determine deprivation of parental support for the child based on its AFDC plan as in effect on July 16, 1996?⁹

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(H) Does the State use Temporary Assistance for Needy Families (TANF), or other income-based criteria to determine a child's eligibility for title IV-E adoption assistance?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

⁹ States with an AFDC plan, as in effect on July 16, 1996, that included the "unemployed parent" option, had the opportunity to amend its AFDC plan to expand its definition of "unemployed parent" to include hours of work, dollar amounts earned, and family size in establishing the reasonable standard of unemployment. See 45 CFR 233.101(a)(1) for further guidance.

(I) If a child is judicially removed from his/her home, does the State require a judicial determination to the effect that to remain in the home would be contrary to the child's welfare in the first court order sanctioning the child's removal (for children removed on or after January 23, 2001), or in any court order prior to the initiation of adoption proceedings (for children removed before January 23, 2001) to be eligible for title IV-E adoption assistance?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(J) If a child is judicially removed from his/her home, does the State require a judicial determination that reasonable efforts were made to prevent the child's removal from his/her home for title IV-E adoption assistance eligibility?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(K) If a child is removed pursuant to a VPA, does the State require that the child receive at least one title IV-E foster care maintenance payment as a condition of title IV-E adoption assistance eligibility?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(L) If a child is removed pursuant to a VPA, does the State require a subsequent judicial determination to the effect that to remain in care is in the child's best interests?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(M) If a child is removed pursuant to a VPA, does the State require that the child be in foster care for a specified length of time in order to be eligible for title IV-E adoption assistance?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(N) Other than a determination of special needs, does the State apply any additional criteria to the AFDC-eligible child's eligibility for title IV-E adoption assistance that are not in Federal law, such as the child's being a ward of the State or eligible for title IV-E foster care, etc.?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

Steps to address areas needing clarification:

List any areas noted above that are inconsistent with Federal requirements:

Action(s) needed to assure the State's program meets Federal requirements:

Citations for State laws, administrative rules, policies, etc., used for review of this requirement:

Legal and Related References for AFDC Pathway:

- *Sections 473(a)(2)(A)(i)(I) of the Social Security Act*
- *Child Welfare Policy Manual, Sections 8.2B (1-2); 8.2B.7 (1-2); 8.2B.10 (1); and 8.2B.13 (1)*

(2) A child who is eligible for Supplemental Security Income (SSI)

benefits: If a child is being determined eligible for title IV-E adoption assistance through the SSI pathway, the child must be determined eligible for SSI by the Social Security Administration prior to the finalization of the adoption. If the SSA final notice of eligibility is received after the finalization, but determines that the child's SSI eligibility began prior to finalization, that is acceptable. However, in all cases, a title IV-E adoption assistance agreement must be in place prior to the finalization of the adoption unless a fair hearing decision is favorable to the adoptive family. Only a designated Social Security Administration claims representative can determine a child's SSI eligibility and provide the appropriate eligibility documentation to the State for the child's file. Additional eligibility criteria that are not in Federal statute may not be applied to the child.

Questions Specific to the SSI Pathway:

(A) If a child's eligibility is based on his/her eligibility for SSI, does the State accept only a written confirmation of eligibility from the Social Security Administration?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(B) Must a child be eligible for SSI prior to the finalization of the adoption to be eligible for title IV-E adoption assistance?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(C) Does the State restrict title IV-E adoption assistance eligibility to children who are SSI eligible at a fixed point in time prior to finalization, such as at the time of the petition to adopt?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(D) Other than the requirements in Federal law, does the State apply additional eligibility criteria for SSI-eligible children to be eligible for title IV-E adoption assistance?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

Steps to address areas needing clarification:

List any areas noted above that are inconsistent with Federal requirements:

Action(s) needed to assure the State's program meets Federal requirements:

Citations for State laws, administrative rules, policies, etc., used for review of this requirement:

Legal and Related References for SSI Pathway:

- *Section 473(a)(2)(A)(i)(II) of the Social Security Act*
- *Child Welfare Policy Manual, Sections 8.2B (1) and 8.2B.12 (1-2)*

(3) A child who is a child of a minor parent in title IV-E foster care: A child is eligible for title IV-E adoption assistance through this pathway if the minor parent's title IV-E foster care maintenance payment covers the child's cost of care while the child was with the minor parent in foster care. Additional eligibility criteria that are not in Federal statute may not be applied to the child.

Questions Specific to the Child of a Minor Parent Pathway:

(A) Does the State provide title IV-E adoption assistance for a child of a minor parent whose title IV-E foster care maintenance payment covers the cost of the child's care while with the minor parent in foster care?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(B) Other than the requirements in Federal law, does the State apply additional eligibility criteria for a child of a minor parent for the child to be eligible for title IV-E adoption assistance?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

Steps to address areas needing clarification:

List any areas noted above that are inconsistent with Federal requirements:

Action(s) needed to assure the State's program meets Federal requirements:

Citations for State laws, administrative rules, policies, etc., used for review of this requirement:

Legal and Related References for Child of Minor Parent Pathway:

- Sections 473(a)(2)(A)(i)(III), and 473(b)(4) of the Social Security Act
- Child Welfare Policy Manual, Section 8.2B (1) and 8.2B.3 (1-2)

(4) A child who was eligible for title IV-E adoption assistance in a previous adoption: A child continues to be eligible for title IV-E adoption assistance in a subsequent adoption if the child was eligible for title IV-E adoption assistance in a previous adoption and the adoptive parent(s) die, or the adoption is dissolved as a result of a termination of parental rights. Continued title IV-E adoption assistance eligibility and payments are not authorized for a child placed with an individual who is not adopting the child, or in situations where the child is placed with a legal guardian. Nor may the State “transfer” the child’s payment to anyone after the adoptive parents die/adoption dissolved. Rather, the State must determine that the child continues to be a child with special needs and enter into a new title IV-E adoption assistance agreement with the subsequent adoptive parent(s). Both the determination of special needs and a signed title IV-E adoption assistance agreement must be completed prior to the finalization of the adoption. Additional eligibility criteria that are not in Federal statute may not be applied to the child.

Questions Specific to a Child Eligible in a Previous Adoption Pathway:

(A) Does the State provide title IV-E adoption assistance in a subsequent adoption for a child who was eligible for title IV-E adoption assistance in a previous adoption if the adoptive parent(s) die or the adoption is dissolved as a result of a termination of parental rights?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(B) Does the State transfer a child’s title IV-E adoption assistance to a legal guardian or other individual with whom the child is placed after the adoptive parent(s) die or the adoption is dissolved?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(C) Does the State require a determination of special needs based on the three-part requirement in section 473(c) of the Act in order for a child to be eligible in a subsequent adoption?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(D) Does the State require a new title IV-E adoption assistance agreement to be negotiated with the subsequent adoptive parent(s) if a child was eligible for title IV-E adoption assistance in a previous adoption in which the adoptive parent(s) die or the adoption is dissolved?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(E) Does the State apply other eligibility criteria that are not in the statute to a child who was eligible for title IV-E adoption assistance in a previous adoption if the adoptive parent(s) die or the adoption is dissolved as a result of a termination of parental rights?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

Steps to address areas needing clarification:

List any areas noted above that are inconsistent with Federal requirements:

Action(s) needed to assure the State's program meets Federal requirements:

Citations for State laws, administrative rules, policies, etc., used for review of this requirement:

Legal and Related References for Child Eligible from Previous IV-E AA Eligibility:

- *Section 473(a)(2)(C) of the Social Security Act*
- *Child Welfare Policy Manual, Sections 8.2A.1 (4); 8.2B (1); and 8.2B.4 (1-2)*

Section III: Background Checks

Prior to October 1, 2006, section 471(a)(20)(A) of the Act required States to conduct background checks of prospective adoptive parents unless the State opted out. For those States that did not opt out, title IV-E adoption assistance may not be claimed by the State if the criminal records check reveals that a prospective adoptive parent has a felony conviction for child abuse or neglect; spousal abuse; a crime against children (including child pornography); or for a crime involving violence (including rape, sexual assault, or homicide, but not including other assault and battery). In addition, title IV-E adoption assistance may not be claimed by the State if the prospective adoptive parent has been convicted of the following felonies within the past five years: physical assault; battery; or a drug-related offense. Those States that opted out instead had to ensure that safety considerations with respect to the caretakers had been met for title IV-E adoption assistance as of March 2001.

As of October 1, 2006, or a delayed effective date approved by ACF, States that did not opt out of the former criminal background provision must secure a fingerprint-based check of the National Criminal Information Database (NCID) for prospective adoptive parent(s). The provisions prohibiting States from claiming title IV-E adoption assistance for prospective foster parents with certain felony backgrounds remain. If a State opted out of the criminal records check provision on or before September 30, 2005, the State is exempt from the criminal background check and felony conviction exclusion until October 1, 2008.

As of October 1, 2006, or a delayed effective date approved by ACF, section 471(a)(20)(C) of the Act requires States to conduct a check of the State-maintained child abuse and neglect registries in all States in which the prospective adoptive parent(s) and all other adults living in the adoptive home have resided in the last five years.

Questions Related to this Requirement:

(A) If your State opted out of the original criminal background check requirement prior to September 30, 2005, are safety considerations addressed for the adoptive parents prior to approving the home?

N/A YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(B)(i) If the NCID-background checks are NOT currently in effect in the State, and the State has not opted out, does the State require a criminal background check at either the Federal/State/local level for all prospective adoptive parents prior to approval?

N/A YES NO NEEDS CLARIFICATION

(B)(ii) If the NCID-background checks are currently in effect in the State, does the State require a fingerprint-based check of the NCID for all prospective adoptive parent(s), or some other authorized alternative for individuals who cannot be fingerprinted appropriately prior to approval?

N/A YES NO NEEDS CLARIFICATION

If either (B)(i) or (ii) is no, this is inconsistent with Federal requirements.

(C) If either (B)(i) or (ii) is yes, is title IV-E adoption assistance available when the State places a child with a prospective adoptive parent who has a felony conviction for child abuse or neglect; spousal abuse; a crime against children (including child pornography); or for a crime involving violence (including rape, sexual assault, or homicide, but not including other assault and battery)?

N/A YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(D) If the response to either (B)(i) or (ii) is yes, is title IV-E adoption assistance available when the State places an adoptive child in a home of a prospective adoptive parent who has had a felony conviction within the past five years for physical assault; battery; or a drug-related offense?

N/A YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(E) If currently in effect in the State, does the State request a check of the State-maintained child abuse and neglect registries in all States in which the prospective adoptive parent(s) and all other adults living in the home have resided in the past five years?

N/A YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(F) If currently in effect in the State, does the State respond to a request for information on prospective adoptive parents and other adult household members from its State-maintained child abuse and neglect registries?

N/A YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

Steps to address areas needing clarification:

List any areas noted above that are inconsistent with Federal requirements:

Action(s) needed to assure the State's program meets Federal requirements:

Citations for State laws, administrative rules, policies, etc., used for review of this requirement:

Legal and Related References for Background Checks:

- *Section 471(a)(20) of the Social Security Act*
- *Child Welfare Policy Manual, Section 8.4F*

Section IV: Child's Immigration Status

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, as amended, limited Federal public benefits to qualified aliens. Adoption assistance under title IV-E of the Act is considered a Federal public benefit for the purposes of the PRWORA and, therefore, limited to U.S. citizens and qualified aliens. The definition of a *qualified alien*, at 8 USC 1641(b), includes but is not limited to, permanent residents, asylees, and refugees (see U.S. Citizenship and Immigration Service website at www.uscis.gov/portal/site/uscis for more details). Children who are illegal aliens or undocumented immigrants are not eligible for adoption assistance since they are not qualified aliens.

In addition, section 403 of PRWORA requires a qualified alien entering the United States on or after the date of enactment of PRWORA (August 22, 1996), unless excepted, to live in the United States for five years before becoming eligible for certain Federal public benefits. In accordance with section 403(c)(2)(F) of PRWORA, however, Federal payments for adoption assistance are excluded from this five-year residency requirement if the child and the foster or adoptive parent(s) with whom s/he is placed are qualified aliens. Accordingly, if a foster or adoptive parent is not a qualified alien, a child who is otherwise eligible under section 473 of the Act must meet the five-year residency requirement to receive title IV-E adoption assistance.

Questions Specific to Child's Immigration Status

(A) Does the State limit title IV-E adoption assistance eligibility only to citizens or qualified alien children who are otherwise eligible for title IV-E adoption assistance?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(B) To receive title IV-E adoption assistance, does the State require that the qualified alien child meet the five-year residency requirement if the child is placed with an adoptive parent who is not a qualified alien?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

Steps to address areas needing clarification:

List any areas noted above that are inconsistent with Federal requirements:

Action(s) needed to assure the State's program meets Federal requirements:

Citations for State laws, administrative rules, policies, etc., used for review of this requirement:

Legal and Related References for Child's Immigration Status:

- *Section 473(a)(2)(B) of the Social Security Act*
- *Section 403(c)(2)(F) of PRWORA*
- *Child Welfare Policy Manual, Section 8.4B (1), (5-7), and (9)*

Section V: Nonrecurring Expenses of Adoption

The State must enter into an adoption assistance agreement prior to the finalization of the adoption and reimburse (up to \$2000, or at State option a reasonable lower limit) the nonrecurring adoption expenses incurred by any parent who is adopting a child with special needs¹⁰. Consistent with the regulations at 45 CFR 1356.41(f)(2), if a State sets a lower maximum, it must be based on reasonable charges, consistent with State and local practices, for special needs adoptions in the State. The basis for setting a lower maximum must be documented and available for public inspection.

The only eligibility criterion to be applied for reimbursement of the nonrecurring expenses of adoption is that the State determine that the child meets the three-part special needs criteria, in accordance with section 473(c) of the Act. A child does not have to be eligible for AFDC, title IV-E foster care, or SSI in order for the adoptive parent(s) to be reimbursed for their nonrecurring adoption expenses.

The term “nonrecurring adoption expenses” is defined in section 473(a)(6)(A) of the Act and 45 CFR 1356.41(i) as the reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State or Federal law, and which have not been reimbursed from other sources or funds. The regulations at 45 CFR 1356.41(i) define “other expenses” as the costs of the adoption incurred by or on behalf of the parent(s) and for which the parent(s) carry the ultimate liability for payment. Such costs may include, but are not limited to, expenses for adoption studies, health and psychological examinations, supervision of the placement prior to the adoption, and reasonable costs of transportation, lodging, and food when necessary to complete the placement or the adoption process.

When the adoption involves an interstate placement, the State entering into the adoption assistance agreement with the prospective adoptive parent(s) is responsible for paying the nonrecurring adoption expenses. If no Federal or State adoption assistance agreement exists for an ongoing subsidy, the State in which the final adoption decree is issued is responsible for reimbursing the nonrecurring adoption expenses if the child is determined to be a child with special needs (45 CFR 1356.41(h)).

In accordance with 45 CFR 1356.41(f)(3), when siblings are adopted, each child is treated as an individual with separate reimbursement for the nonrecurring expenses of adoption up to the maximum amount allowable for each child.

The nonrecurring expenses of adoption may be reimbursed on behalf of a child in an adoptive placement regardless of whether the adoption is ever finalized, so long as the State has determined that the child is a child with special needs and

¹⁰ Please note exception for favorable fair hearing decisions.

there is a title IV-E agreement for the nonrecurring expenses of adoption between the adoptive parent(s) and the State or local agency.

Although the adoption assistance agreement must be signed and in effect prior to the finalization of the adoption, FFP is available for claims for reimbursement that are made by the adoptive parent(s) up to two years from the date of the finalization of the adoption.

Questions Related to the Nonrecurring Expenses of Adoption Requirement:

(A) Does the State enter into an agreement to reimburse adoptive parent(s) for the nonrecurring adoption expenses incurred, up to \$2000 or a reasonable lower limit, in the adoption of a child with special needs?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(B) Does the State apply the three-part special needs determination to the child to determine whether the parent(s) are eligible for reimbursement of the nonrecurring adoption expenses incurred in the adoption of the child?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(C) Does the State apply any additional criteria not in Federal law, such as requiring a child's eligibility for ongoing title IV-E adoption assistance, requiring an income eligibility test for the adoptive parent(s) or limiting reimbursement by category, for reimbursement of the nonrecurring expenses of adoption?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(D)(i) Does the State set a reasonable lower limit than the \$2000 allowed by Federal regulations?

YES NO NEEDS CLARIFICATION

(D)(ii) If yes, is the lower amount based on reasonable charges, consistent with State and local practices, for special needs adoptions within the State?

N/A YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(E) Does the State require that the adoption assistance agreement for reimbursement of the nonrecurring expenses of adoption be signed by the parents and the agency prior to the finalization of the adoption?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(F) When siblings are adopted, either together or individually, does the State treat each individually with a separate reimbursement for the nonrecurring expenses of adoption incurred on behalf of each sibling?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(G) Does the State enter into an adoption assistance agreement and reimburse the nonrecurring expenses of adoption if it places a special needs child with adoptive parent(s) in another State?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

Steps to address areas needing clarification:

List any areas noted above that are inconsistent with Federal requirements:

Action(s) needed to assure the State's program meets Federal requirements:

Citations for State laws, administrative rules, policies, etc., used for review of this requirement:

Legal and Related References for the Nonrecurring Expenses of Adoption:

- *Sections 473(a)(1)(B)(i) and 473(a)(6) of the Social Security Act*
- *45 CFR 1356.41*
- *Child Welfare Policy Manual, Sections 8.2D.3 (1-6), 8.2A.2 (1), 8.2D.4 (1-7), and 8.4D (1-2)*

Section VI: Adoption Assistance Agreements

Title IV-E adoption assistance is available on behalf of a title IV-E eligible child if the State agency enters into an adoption assistance agreement with the prospective adoptive parent(s) prior to the finalization of the adoption¹¹. The agreement must be signed by all parties to the agreement (namely, the adoptive parent(s) and State agency representative), and a signed copy given to each party.

The agreement must specify:

- the duration of the agreement;
- the nature and amount of any payment, service and assistance to be provided;
- that the child is eligible for title XIX Medicaid;
- that the agreement shall remain in effect regardless of the State in which the adoptive parent(s) reside; and
- that the interests of the child are protected in cases where the adoptive parent(s) and child move to another State.

The State may enter into an adoption assistance agreement and begin paying title IV-E adoption assistance prior to the finalization of the adoption once the child is placed in the adoptive home and determined eligible for title IV-E adoption assistance.

Once determined eligible for title IV-E adoption assistance, a child is eligible up to the age of 18. The State has the option to continue to provide assistance up to the age of 21 if the State determines that the child has a mental or physical disability which warrants continuation of adoption assistance. If the child does not have such a disability, the child is not eligible for title IV-E adoption assistance beyond the age of 18. States may limit the duration of payments under an adoption assistance agreement for an individual child to a period which may end before the child's 18th birthday, but such decisions must be made on a case-by-case basis with the concurrence of the adopting parent(s) and taking into consideration the needs of the child and the circumstances of the parent(s). The State may not have a blanket policy which limits the duration of adoption assistance to a date earlier than the 18th birthday of eligible children.

A title IV-E adoption assistance agreement can be terminated only under three circumstances: (1) the child has attained the age of 18 (or the age of 21, at State option, if the State determines that the child has a mental or physical disability which warrants continuation of assistance); (2) the State determines that the adoptive parent(s) are no longer legally responsible for support of the child; or (3) the State determines that the adoptive parent(s) are no longer providing any support to the child. A parent is considered no longer legally responsible for support of the child when parental rights have been terminated or when the child

¹¹ Please note exception for favorable fair hearing decisions.

becomes an emancipated minor, marries, or enlists in the military. “Any support” is defined as various forms of financial support, such as family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child’s special needs. Thus, title IV-E adoption assistance can continue even in situations where the child is no longer living in the home, so long as the State determines that the parent is providing some form of financial support for the child.

Questions Specific to the Adoption Assistance Agreement

(A) Is title IV-E adoption assistance available only when the adoption assistance agreement is in effect prior to the finalization of the adoption, unless a fair hearing rules in favor of an eligible child after the finalization of the adoption?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(B) Does the title IV-E adoption assistance agreement include all the required elements: 1) the duration of the agreement; 2) the nature and amount of any payment, service and assistance to be provided; 3) that the child is eligible for title XIX Medicaid; 4) that the agreement shall remain in effect regardless of the State in which the adoptive parent(s) reside; and 5) that the interests of the child are protected when the adoptive parent(s) and child move to another State?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

If no, list the missing elements:

(C) Does the State terminate or otherwise suspend title IV-E adoption assistance without the concurrence of the adoptive parent(s) for reasons other than those enumerated above?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(D) If the State requires recertification of eligibility or renewal of the adoption assistance agreement, does the State terminate or suspend title IV-E adoption assistance if the recertification or renewal is not returned to the State or not returned in a timely manner?

N/A YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(E) Does the State provide title IV-E adoption assistance beyond the age of 18 for any reason other than a child's mental or physical handicap which warrants continuation of assistance?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(F) If the State begins title IV-E adoption assistance before the finalization of the adoption, does the State require that the child be placed in the adoptive home, all eligibility criteria be met and the adoption assistance agreement be signed by all parties?

N/A YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

Steps to address areas needing clarification:

List any areas noted above that are inconsistent with Federal requirements:

Action(s) needed to assure the State's program meets Federal requirements:

Citations for State laws, administrative rules, policies, etc., used for review of this requirement:

Legal and Related References for Adoption Assistance Agreements:

- *Sections 473(a)(1)(A) and 473(a)(1)(B) of the Social Security Act*
- *45 CFR 1356.40(b) and (d)-(e)*
- *Child Welfare Policy Manual, Sections 8.2A.1 (1-3)*

Section VII: Adoption Assistance Rates

The amount of the title IV-E adoption assistance payment cannot exceed the amount the child would have received if s/he had been in a foster family home, but otherwise must be determined through agreement between the adoptive parents and the State or local title IV-E agency. The title IV-E adoption assistance program is intended to encourage an action that will be a lifelong social benefit to certain children. The payment that is agreed upon should combine with the parent(s)' resources to cover the ordinary and special needs of the child projected over an extended period of time. The amount of assistance may be readjusted periodically, with the concurrence of the adoptive parent(s), not to exceed the amount the child would have received if s/he had been in a foster family home.

In determining the maximum amount a child would have received in a foster family home, and thus the maximum amount of adoption assistance, the State may take into consideration its level-of-care rates. In addition, the State may include such items as child care costs, if the State includes such payments across-the-board for children of working foster parent(s), and periodic across-the-board increases in the rates that certain children receive in foster care, such as a school clothing allowance, etc. However, title IV-E adoption assistance cannot include additional payments if they are provided only for an individual child but not available across-the-board in the State's foster care payment rate standard or structure.

A State has the discretion to negotiate an adoption assistance agreement that automatically allows for adjustments to the adoption assistance payment when there is an increase or decrease in the across-the-board foster care board rate. A State also may renegotiate an adoption assistance agreement if the adoptive parent(s) request an increase in payment due to a change in their circumstance and a higher foster care rate would have been paid on behalf of the child if the child had been in a foster family home.

The use of a means test is prohibited in the process of the State selecting suitable adoptive parent(s), or determining the amount of the adoption assistance payment.

After the adoption assistance agreement is signed, the adoptive parent(s) are free to make decisions about expenditures on behalf of the child without further agency approval or oversight. The parent(s) can spend the title IV-E adoption assistance benefit in any way they see fit to incorporate the child into their lives. Since there is no itemized list of approved expenditures for adoption assistance, the State cannot require an accounting for the expenditures.

Title IV-E does not prohibit concurrent receipt of title IV-E adoption assistance and other Federal benefits and does not require that the title IV-E adoption assistance be reduced by the amount of assistance received from other Federal

benefits. These other benefits may be considered in negotiation of the title IV-E adoption assistance agreement, but the State must take into consideration the circumstances of the adoptive parent(s) and the needs of the child, and the adoptive parent(s) must concur with the negotiated amount of assistance.

For interstate adoptions, the placing State is responsible for setting the title IV-E adoption assistance payment based on its foster care rate structure. If the placing/paying State's law or policy allows flexibility to pay amounts based upon the foster care board rate in the State in which the child is placed for adoption, this practice would be allowable under title IV-E since the statutory requirement in section 473(a)(3) of the Act would be met.

Questions Specific to Adoption Assistance Rates

(A) Does the State limit title IV-E adoption assistance to no more than a child would have received if s/he had been in a foster family home?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(B) Does the State determine the amount of title IV-E adoption assistance through a negotiation process with the adoptive parent(s)?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(C) Does the State use a means test with respect to the adoptive parent(s) to determine the amount of the title IV-E adoption assistance payment?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(D) Does the State require an accounting from the adoptive parent(s) for the actual expenditures from the title IV-E adoption assistance payment?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(E) Does the State allow the amount of the title IV-E adoption assistance payment to include special allowances that may be available on behalf of a specific child in foster care, but are not available across-the-board?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(F) Does the State consider requests from adoptive parent(s) to renegotiate the title IV-E adoption assistance agreement for an increase in a child's title IV-E adoption assistance payment if the child is not receiving the maximum assistance allowed?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(G) In negotiating the title IV-E adoption assistance agreement, does the State automatically reduce the amount of the title IV-E adoption assistance offered to the family dollar-for-dollar by the amount a child receives as an SSI benefit, or some other Federal benefit?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

(H) After the title IV-E adoption assistance agreement is signed and in effect, does the State automatically reduce the amount of title IV-E adoption assistance for any reason, (such as, an increase in the adoptive parent's income, the child's receipt of another public benefit, child's receipt of a trust fund, the adoptive child's income from a job, etc.) other than an across-the-board reduction in the State's foster care board rates, without the concurrence of the adoptive parent(s)?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

Steps to address areas needing clarification:

List any areas noted above that are inconsistent with Federal requirements:

Action(s) needed to assure the State's program meets Federal requirements:

Citations for State laws, administrative rules, policies, etc., used for review of this requirement:

Legal and Related References for Adoption Assistance Rates:

- *Sections 473(a)(1)(B)(ii), and 473(a)(3)-(4) of the Social Security Act*
- *45 CFR 1356.40(c)*
- *Child Welfare Policy Manual, Sections 8.2D.4*

Section VIII: Medicaid Eligibility

Any child who is eligible for title IV-E adoption assistance under a title IV-E adoption assistance agreement is categorically eligible to receive title XIX Medicaid in his/her State of residence consistent with the terms of the State's title XIX plan.

Questions Specific to Medicaid Eligibility

(A) Does the State confer automatic Medicaid eligibility to a child who is eligible for title IV-E adoption assistance?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(B) Does your State provide Medicaid coverage for a child who is adopted under a title IV-E adoption assistance agreement in another State if the adoptive parent(s) and the child move to your State?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(C) Does the State require the adoptive parent(s) to provide private health insurance in lieu of or in addition to Medicaid?

YES NO NEEDS CLARIFICATION

If yes, this is inconsistent with Federal requirements.

Steps to address areas needing clarification:

List any areas noted above that are inconsistent with Federal requirements:

Action(s) needed to assure the State's program meets Federal requirements:

Citations for State laws, administrative rules, policies, etc., used for review of this requirement:

Legal and Related References for Medicaid Eligibility:

- *Section 471(a)(21) and 473(b)(1) of the Social Security Act*
- *45 CFR 1356.40(b)(3)*
- *Child Welfare Policy Manual, Section 8.2B.8*

Section IX: Fair Hearings

Federal statute and regulations require that the State provide an opportunity for a fair hearing to any individual whose claim for assistance is denied or not acted upon with reasonable promptness. A fair hearing opportunity applies to a denial, suspension, reduction, discontinuance, or termination of assistance. Some allegations that constitute grounds for a fair hearing under the title IV-E adoption assistance program include, but are not limited to:

- relevant facts regarding the child were known by the State agency or child-placing agency and not presented to the adoptive parent(s) prior to the finalization of the adoption;
- denial of assistance based upon a means test of the adoptive parent(s);
- adoptive parent(s) disagree with the determination by the State that a child is ineligible for adoption assistance;
- failure by the State agency to advise potential adoptive parent(s) about the availability of adoption assistance for children in the State foster care system;
- decrease in the amount of adoption assistance without the concurrence of the adoptive parent(s);
- denial of a request for a change in payment level due to a change in the adoptive parent(s) circumstances; and
- failure of the State agency to complete the required paperwork prior to the finalization of the adoption.

In situations where the final fair hearing decision is favorable to the adoptive parent(s), the State agency can reverse the earlier decision to deny benefits under title IV-E. If the child meets all the eligibility criteria, the State may enter into a title IV-E adoption assistance agreement with the adoptive parent(s) and Federal Financial Participation (FFP) is available, beginning with the earliest date of the child's eligibility (e.g., the date of the child's placement in the adoptive home or finalization of the adoption) in accordance with Federal and State statutes, regulations and policies.

The right to a fair hearing is a procedural protection that provides due process for individuals who claim that they have been wrongly denied benefits. This procedural protection, however, cannot confer title IV-E benefits without legal support or basis. Accordingly, FFP is available only in those situations in which a fair hearing determines that the child was wrongly denied benefits and the child meets all Federal eligibility requirements. Thus, if a fair hearing officer decides that a child should have received adoption assistance, but, in fact, the child does

not meet all the Federal eligibility criteria, the State cannot claim FFP under title IV-E for the child.

The State is required to inform prospective adoptive parent(s) in writing at the time of the application, and at the time of any action affecting their claim, of the right to a fair hearing; the method by which they may obtain a hearing; and that they may be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or may represent themselves.

The fair hearing process must be conducted by an impartial official(s) or designee of the agency. The hearing official or designee cannot have been directly involved in the initial determination of the action in question (45 CFR 205.10(a)(9)).

Questions Specific to Fair Hearings

(A) Does the State require that adoptive parent(s) be informed in writing at the time of their application and at the time of any action affecting their adoption assistance payments for title IV-E adoption assistance of their right to a fair hearing and the process for requesting the hearing?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(B) Does the State offer an opportunity for a fair hearing to any individual whose claim for assistance under title IV-E adoption assistance is denied or not acted upon with reasonable promptness?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(C) Does the State offer an opportunity for a fair hearing if title IV-E adoption assistance is terminated or suspended without the concurrence of the adoptive parent(s)?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(D) Does the State require that adoptive parent(s) be informed in writing that they may be represented at the fair hearing by legal counsel or other spokesperson?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

(E) Is the fair hearing process conducted by an impartial official, or designee of the agency who was not involved in the initial determination of the action in question?

YES NO NEEDS CLARIFICATION

If no, this is inconsistent with Federal requirements.

Steps to address areas needing clarification:

List any areas noted above that are inconsistent with Federal requirements:

Action(s) needed to assure the State's program meets Federal requirements:

Citations for State laws, administrative rules, policies, etc., used for review of this requirement:

Legal and Related References for Fair Hearings:

- *Section 471(a)(12) of the Social Security Act*
- *45 CFR 1355.30(p)(2) and 45 CFR 205.10*
- *Child Welfare Policy Manual, Sections 8.4G (1-2) and (4-5)*