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TITLE IV-E ELIGIBILITY FOSTER CARE: COURT RELATED STANDARDS

Title IV-E of the Social Security Act (SSA) sets forth standards for federal payments for foster care and adoption assistance (sections 470-479a of the SSA). Included within these standards are requirements that directly relate to court activity. The failure to comply with these standards can result in the loss of federal funding for a limited period of time or for the duration of the foster care placement. This document outlines federal Title IV-E eligibility standards that involve the court and addresses compliance issues relating to those standards.

A. FEDERAL REMOVAL OF CHILD

Federal Standard: The child must have been removed from his or her home as a result of either, a court order or a voluntary placement agreement. Under federal Title IV-E standards, a voluntary placement agreement is valid for 180 days after placement. Title IV-E funding is thereafter available only if, within 180 days of placement, the court has determined that continued placement is in the child's best interests. A voluntary placement agreement executed by a person other than the child's parent or legal guardian is not Title IV-E eligible.

Federal Reference: Section 472(a)(1) of the SSA.

State References: Sections 358-a(3) and 384-a of the SSL; Sections 353.3(1), 756(a)(i), 1022(a), 1027(b), 1028(a), 1051(d), and 1055(a) of the FCA.

Impact of Non-Compliance: Federal funding under Title IV-E is not available until the court order is issued or a voluntary placement agreement is executed and all other Title IV-E eligibility requirements have been satisfied. Title IV-E is not available where a child is placed

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pursuant to a voluntary placement and a court determination of best interests has not been made within 180 days of placement.

Compliance Issues: For Title IV-E purposes, a voluntary transfer of care and custody pursuant to section 384-a of the Social Services (SSL) by a parent or guardian is a voluntary placement agreement. If a child is placed into foster care pursuant to a section 384 surrender, the child is not eligible for Title IV-E foster care until a section 358-a court order approving the placement is granted. A section 384 surrender is not a voluntary placement agreement for federal purposes.

-When the basis for the child being placed into foster care is either a section 1021 removal with consent or a section 1024 removal without consent, the child is not eligible for Title IV-E until a court order (section 1027/1028/1051/1055) is issued granting the social services district care and custody of the child and adequately addressing the issues of contrary to the welfare/best interests and reasonable efforts as noted below.

-Absent a court determination addressing contrary to the welfare/best interests, Title IV-E eligibility for a child voluntarily placed terminates 180 days after placement. This problem arises when a timely section 358-a order addressing best interests is not obtained.

B. LEGAL AUTHORITY

Federal Standard: The child must be in the care and placement of the State (OCFS) or other public agency (local department of social services). The commissioner of social services or OCFS must have care and custody or custody and guardianship of the child either pursuant to a court order or a voluntary placement agreement (local departments only).

Federal Reference: Section 472(a)(2) of the SSA.

State References: Sections 358-a(3) and 384-a of the SSL; Sections 353.3(1), 756(a)(i),

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1022(a), 1027(b), 1028(a), 1051(d), and 1055(a) of the FCA.

Impact of Non-Compliance: Federal Title IV-E funding is not available until the local commissioner or OCFS assumes legal custody of the child.

Compliance Issue:

-The most common problem with legal authority is where a time-limited court order granting custody in Article 3 or 7 cases is not extended on a timely basis. When that takes place, legal authority lapses and Title IV-E funding must cease at the end of the month the order lapses.

-Legal authority may resume with a subsequent court order on the first day of the month the order was issued. However, for Title IV-E purposes, legal authority may not be retroactively applied through a nunc pro tunc court order. Nunc pro tunc orders are not recognized or acceptable by the federal Title IV-E oversight agency.

C. BEST INTERESTS

Federal Standard: When a child is removed from his or her home by a court order, a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child or that placement would be in the best interests of the child (contrary to welfare/best interests) is required. The judicial determination regarding contrary to the welfare/best interests must be explicitly documented in the initial court order sanctioning removal and must be made on a case-by-case basis.

Federal References: Section 472(a)(1) of the SSA; 45 CFR 1356.21(c) and 45 CFR 1356.21(d).

State References: Section 358-a(1) of the SSL; Sections 307.4(8), 320.5(5), 352.2(b), 728(d), 739(c), 1022(a), 1027(b), 1028(b), and 1052(b)(i) of the FCA.

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Impact of Non-Compliance: Federal regulation, 45 CFR 1356.21(c) provides that the failure to make a timely and adequate court finding of contrary to welfare/best interests pertaining to removal results in the loss of federal Title IV-E funding for the duration of the foster care placement (episode).

Compliance Issues:

-A common problem is where the initial court order sanctioning removal of the child fails to reflect a case specific finding regarding contrary to welfare/best interests. For example, the order provides for the removal of the child but fails to make a finding regarding best interests or contrary to welfare.

-Federal funding is not available where the court indicates that it “would not” be contrary to the welfare of the child to remain in his or her home, even if in the same order, the court places the child into foster care.

D. REASONABLE EFFORTS – REMOVAL

Federal Standard: When a child is removed from his or her home by a court order, a case specific judicial determination whether reasonable efforts were made to prevent removal or that reasonable efforts were not required must be made within 60 days of the removal of the child from his or her home.

Federal References: Section 471(a)(15) of the SSA; 45 CFR 1356.21(b)(1) and 45 CFR 1356.21(d).

State References: Section 358-a(1) & (3) of the SSL; 307.4(8), 320.5(5), 352.2(2)(b)-(d), 754(2)(a)-(c), 1022(a), 1027(b), 1028(b)-(d), 1039-b, and 1052(b)(i) of the FCA.

Impact of Non-Compliance: Federal regulation, 45 CFR 1356.21(c), provides that the failure to make a timely and adequate finding of reasonable efforts where a child is removed by a

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court order results in the loss of federal Title IV-E funding for the duration of the foster care placement (episode).

Compliance Issues:

-The court order fails to contain a finding of reasonable efforts. This may occur because the court form used does not reference the standard, as in the case of a short form order.

-In some cases where the court makes a finding that “reasonable efforts were not made”, it may also have been appropriate for the court to have actually made a finding that reasonable efforts were not made but that the lack of efforts was appropriate/reasonable. A court finding that no efforts were reasonable with an explanation why no efforts were reasonable/appropriate is acceptable for Title IV-E purposes.

-The court fails to make a timely determination of reasonable efforts. This occurs where a child is removed on an emergency basis and the court order sanctioning removal is not issued until more than 60 days from the date the child was removed from his or her home. In such a situation, the adequacy of the court finding addressing reasonable efforts is not relevant because of the lack of timeliness. Timeliness is an issue in two particular categories of cases. One is when the child is removed on an emergency basis pursuant to either section 1021 or 1024 of the FCA and a section 1027 or 1028 hearing is not held within 60 days of removal. The other situation is where the court, in a case under either an Article 3 or 7 of the FCA, places a child into detention but fails to adequately address the issue of reasonable efforts (and/or best interests).

Note: The federal standard relating to reasonable efforts to prevent removal is not a Title IV-E eligibility standard for children placed into foster care by a voluntary placement agreement. It is a Title IV-E State Plan Requirement.

E. REASONABLE EFFORTS – FINALIZE PERMANENCY PLAN

Federal Standard: A case specific judicial determination that reasonable efforts have been made to finalize the child's permanency plan, whether the plan is reunification, legal guardianship, placement with a fit and willing relative or placement in another planned living arrangement, must be obtained within 12 months of the entry of the child into foster care (a child is considered to have entered foster care on the earlier of the fact finding of abuse or neglect or the date that is 60 days after the removal of the child from his or her home). Subsequent case specific judicial determinations that reasonable efforts were made to finalize the child's permanency plan must be obtained at least once every 12 months thereafter while the child is in foster care.

Federal References: Section 471(a)(15) of the SSA; 45 CFR 1356.21(b)(2) and 45 CFR 1356.21(d).

State References: Sections 358-a(3)(b) and 392(5)–(6-a) of the SSL; Sections 355.5, 756-a(b)-(e), 1055(b) and 1089(d).

Impact of Non-Compliance: Federal regulation, 45 CFR 1356.21(b)(2) provides that if a reasonable efforts determination is not made on a timely basis, the foster care case remains ineligible for federal Title IV-E funding until the first of the month such a judicial determination is made.

Compliance Issues:

-The petition for a permanency hearing is not filed on a timely basis in Article 3 or 7 cases precluding a timely court determination from being made.

-The permanency hearing report or the petition for a permanency hearing is served/filed on a timely basis but the permanency hearing is not held in a timely manner or the permanency hearing is held, but the issue of reasonable efforts is not addressed during the permanency

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hearing. The holding of the permanency hearing, in and of itself, does not satisfy the federal Title IV-E reasonable efforts eligibility requirement.

-The permanency hearing court order fails to reflect a case specific determination that reasonable efforts were made to finalize the child's permanency plan.

-The permanency hearing court order only addresses reasonable efforts to prevent removal, which is the standard for the initial removal order and not a permanency hearing.

-The court concludes that reasonable efforts were not made because of a change in permanency plan when the court could have appropriately concluded that reasonable efforts were made to pursue the revised permanency plan.

Note: The federal standard relating to reasonable efforts to finalize the child's permanency plan is not a Title IV-E eligibility standard for child placed into foster care by a voluntary placement agreement. It is a Title IV-E State Plan requirement.

F. PLACEMENT WITH SPECIFIC FOSTER CARE PROVIDER

Federal Standard: Title IV-E reimbursement is not available when a court orders a placement with a specific foster care provider.

Federal Reference: 45 CFR 1356.21(g)(3).

State References: Sections 353.3(2) and (4), 756(a)(ii) and 1017 of the FCA.

Impact of Non-Compliance: Title IV-E funding not available for the period of time the child is cared for in the court directed placement.

Compliance Issues:

-In some proceedings, the court will direct the child to be placed in a particular foster care facility or foster home (see sections 353.3(2), 756(a)(ii) and 1017 of the Family Court Act). Input of the social services district, the county or OCFS must have been presented to the court

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for the placement to be eligible for Title IV-E funding, even if the recommendation is not accepted by the court. The OCA court forms contain findings that address this issue.