TITLE IV-E QUESTIONS FOR EXTENDED CARE IN NEBRASKA

I. Parenting Youth and Funding

Question 1: Can the child welfare agency draw down IV-E funds for the cost of placement for a dependent mother and non-dependent child?

Response: Yes. Federal law and regulation speak directly to this and allow the child welfare agency to receive IV-E reimbursement for the cost of care (room and board) of a dependent child who is a parent *and* her child, even when the child is not dependent.

Authority:

- 42 U.S.C.A.§ 675 (4)(B) states that when the mother is IV-E eligible and placed in a IV-E eligible placement, the child welfare agency can include in the cost for which it seeks reimbursement "such amounts as may be necessary to cover the cost of the items described in that subparagraph [listing the costs that are reimbursable] with respect to such son or daughter" of the dependent parent.
- 45 C.F.R. § 1356.21 (j) states that "foster care maintenance payments made on behalf of a child placed in a foster family home or child care institution, who is the parent of a son or daughter in the same home or institution, must include amounts which are necessary to cover costs incurred on behalf of the child's son or daughter."
- Child Welfare Manual, 8.3A.5 Title IV-E, Foster Care Maintenance Payments Program, Eligibility, Child of a Minor Parent, Question 1, https://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=53

  "Section 475(4)(B) of the Act requires that foster care maintenance payments for a minor parent in foster care cover a child of such parent if the child is placed with the minor parent. Neither the statute nor regulations require the State to have placement and care responsibility for the child in order for such costs to be included in the minor parent's foster care maintenance payment. Good social work practice suggests that the minor parent's case plan include the needs of the child and that the child's needs and interests be addressed during the six-month periodic reviews and permanency hearings held on behalf of the minor parent. However, the State is not required to satisfy these requirements independently on behalf of the child because s/he is not under the State's responsibility for placement and care and, therefore, pursuant to Federal law and regulations, is not in foster care."

Question 2: Can the child welfare agency claim administrative costs for the child of a dependent mom when the baby is not dependent?

Response: No. While the agency can claim placement costs through the IV-E eligible mom and administrative costs can be received for the IV-E eligible mom, administrative costs cannot be drawn down for the non-dependent baby.

Authority:

- Child Welfare Manual, 8.1B, Administrative Functions/Costs, Allowable Costs-Foster Care Maintenance Payments Program, Question 3, https://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=36

  "When a child is placed with his/her minor parent, no administrative costs may be claimed on her/his behalf because s/he is not eligible for nor a recipient of title IV-E foster care maintenance payments. The State is merely increasing the amount of the title IV-E foster care maintenance payment made on behalf of the eligible minor parent to accommodate the board and care of the child."

Question 3: Does federal law require any set rates for mother-baby placements? For example, is there a federal requirement that the rate for a mother baby placement be the foster care rate times 2?

Response: No. Federal law speaks to what can be reimbursed for through the definition of **foster care maintenance payments**. State law or regulation, however, could set limitations or impose requirements on rates, but this is something that could be adjusted through the state law or regulatory processes if the current structure is creating constraints.[1]

Authority:

- Under 42 U.S.C.A.§ 675 (4)(A), **foster care maintenance payments** is defined as "payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence."
- Child Welfare Manual, 8.3B.2 Title IV-E, Foster Care Maintenance Payments Program, Payments, Rates, Question 1., https://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=80

[1] California, for example, has a very detailed rate structure for home placements with a dependent parent and his or her child is handled. Various placements have specified rates, and include specialized foster homes for parenting youth. In addition, there is an "infant supplement" that is tacked on to all settings. Welfare and Institutions Code 11465 provides information about the infant supplement.

> "The availability of FFP should have little or no impact on States' rate setting practices for for-profit child-care institutions if a single set of standards has been utilized for facilities regardless of title IV-E eligibility. The approved rates should, however, clearly identify and separate payments for foster care maintenance, as defined at section 475 (4)(A) of the Act, from those for tuition, treatment, social services, and other expenditures not reimbursable under title IV-E foster care maintenance."

Tips and Take-Aways

- Determine a rate structure for parenting youth placements and remove legal or regulatory barriers to implementing this structure. Because the state has the flexibility to develop the "supervised setting" placement category for youth 18-21, this may be an area to experiment with your ideal for a rate or the creation of a supplement for settings for parenting youth without revising the whole rate structure.
- Determine whether the low IV-E penetration rates for parents (that you cited) would be remedied or reduced with the actions recommended below or whether there are reasons why parenting youth in particular have lower eligibility rates.
- Determine whether other funds, such as TANF, WIC, and foodstamps, for the children, are being maximized to help cover the cost of board and care and develop a plan to ensure access to benefits it they are not being utilized.

II. Redetermination of IV-E Eligibility

Question 1: In what situations do—or can-- the child welfare agency avoid doing a new IV-E eligibility determination?

Response: New IV-E determinations must occur when there is a new foster care episode. The Child Welfare Manual states that "[t]he criteria to be used in determining whether re-establishing a child's eligibility for foster care maintenance payments under title IV-E would be required hinges on whether the child is continuously in foster care status and remains under the responsibility of the title IV-E agency for placement and care." Child Welfare Manual, 8.3A.10 Title IV-E, Foster Care Maintenance Payments Program, Eligibility, Redeterminations, Question 2, https://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=19. A foster care episode can continue when a child is continuously in the placement and care responsibility of the child welfare agency. However, a redetermination does **not** need to be done if the child re-enters foster care after a trial discharge, which has been modeled on a "trial home visit." In this case, the young adult must re-enter care within 6 months of discharge or within a time period set by the court. If, for example, the court stated in the court order that the trial period lasted until the age of 21, the young adult could re-enter at any time before turning that age and no new IV-E determination would need to be done. Authority:

Authority:

- 45 C.F.R. 1356.21 (e) *Trial home visits.* A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

- Child Welfare Manual, 8.3C.5 Title IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Trial home visit, Question 2, https://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=93

  "Pursuant to 45 CFR 1356.21 (e), six months is the outside limit for a trial home visit without having to re-establish title IV-E eligibility if the child re-enters foster care, unless there is a court order extending the trial home placement beyond six months. If there is a court order extending the trial home visit beyond six months, and the trial home visit does not exceed the time frame in the court order, the child retains title IV-E eligibility upon returning to foster care following the trial home visit."

- Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008, Program Instruction, p. 6-7, ACYF-CB-PI-10-11 (July 9, 2010).

  "Trial independence and breaks in foster care – A title IV-E agency should follow existing Federal policy with regard to when to consider a child/youth as remaining in foster care versus when a break has occurred that warrants a new determination of title IV-E eligibility with new judicial determinations or a new voluntary placement agreement (see CWPM 8.3A.4, 8.3A.10 and 8.3C.5). A title IV-E agency is not required to reestablish judicial determinations related to contrary to the welfare or reasonable efforts for a youth age 18 or older whose departure from foster care is consistent with 45 CFR 1356.21(e). For example, a youth age 17 who is title IV-E eligible decides to leave foster care upon attaining age 18. Three months after the youth's 18th birthday, the youth returns seeking the title IV-E agency's assistance. As the youth has tried independence for less than a six-month trial period, the title IV-E agency does not need new judicial determinations or a voluntary placement agreement to satisfy section 472(a)(2)(A) of the Act upon return. Similarly, if a court order authorized the youth's trial independence for a year after the youth's 18th birthday, title IV-E foster care maintenance payments may be made if the youth is otherwise eligible when returning to foster care during that year."

Question 2: What triggers a new determination in an extended care case?

Response: The creation of a voluntary placement agreement with the young adult or a new court ordered removal of the young adult would constitute a new foster care episode and new IV-E determination.

Authority:

- Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008, Program Instruction, p. 6, ACYF-CB-PI-10-11 (July 9, 2010).

  > "Voluntary placement agreement after attaining age 18 – A voluntary placement agreement entered into between the youth age 18 or older and the title IV-E agency can meet the removal criteria in section 472(a)(2)(A)(i) of the Act. In this situation the youth age 18 or older is able to sign the agreement as his/her own guardian. See below for additional details related to voluntary placement agreements."

- Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008, Program Instruction, p. 6, ACYF-CB-PI-10-11 (July 9, 2010).

  > "Court ordered removal after attaining age 18 – A youth age 18 or older who is removed via court order with judicial determinations regarding contrary to the welfare and reasonable efforts can meet the criteria in section 472(a)(2)(ii) of the Act, to the extent that there is jurisdiction by the juvenile or other court to do so. Such judicial determinations may reflect the circumstances that are unique to a youth age 18 or older returning to foster care consistent with existing policy at Child Welfare Policy Manual (CWPM) 8.3A.7 Q/A #3. For example, a contrary to the welfare judicial determination may state that it is in the best interests of the youth to be placed in foster care and a reasonable efforts to prevent removal finding may state that the title IV-E agency made reasonable efforts to meet the youth's needs prior to a foster care placement."

Question 3: At what point in time must the young adult's income be considered for the purpose of AFDC eligibility? Once that determination is done, must it be repeated and updated over time?

Response: Income is considered for the month in which the voluntary placement agreement was signed or when court ordered removal was ratified. Only this initial income eligibility determination must be done. **No redeterminations or updating of income is required**.

Authority:

- Child Welfare Manual, 8.4A Title IV-E, General Title IV-E Requirements, AFDC Eligibility, Question 21, https://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=8

"The state must determine a child's AFDC eligibility in or for the month in which the court proceedings were initiated or the voluntary placement agreement was signed."

- Child Welfare Manual, 8.4A Title IV-E, General Title IV-E Requirements, AFDC Eligibility, Question 24, https://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=8

  "A title IV-E agency is not required to re-determine a child's AFDC eligibility. **Given the statutory changes over the years, we have eliminated the former requirement to re-determine a child's AFDC eligibility at regular intervals** as we now believe it is unnecessary to conduct re-determinations for a program (AFDC) that has not been operational for nearly 14 years. **Further, it is not possible to implement the option to extend title IV-E assistance to youth in foster care over the age of 18 and require such youth to be subject to AFDC re-determinations. To do so clearly would be inconsistent with the law's amendments to provide an option for extended title IV-E assistance to older youth**. Rather, a child must have met the AFDC eligibility requirements per section 472(a)(3) of the Social Security Act at the time of removal from the home or when a voluntary placement agreement is entered to be eligible for title IV-E foster care. For the purpose of title IV-E eligibility reviews, we will not review whether title IV-E agencies have conducted annual AFDC re-determinations for each child in the sample." (emphasis added)

Tips and Take-Aways

- Amend the state law to allow the VPA to be one of a few options to enter the extended care program while requiring documentation of voluntariness as a basic condition of eligibility.
- Include in the case planning process a procedure for evaluating and identifying the optimal time to enter in to the VPA if such flexibility is allowed by law to take into account the youth's income.
- Amend the law so that the young adult can sign the VPA at age 18 to allow for an earlier window to consider the young adult's income.
  - If that is not possible and relies on changing the law on the age of majority, the law could be amended to have the court open an extension of care case and make one of the conditions be documentation that the young adult has signed a voluntary agreement and has voluntarily entered the program. The ACF PI would seem to allow this as another way to satisfy the removal requirement and begin a new foster care episode. This would be "court ordered removal after attaining age 18" mentioned above. As explained in the PI, the findings would be age appropriate and would not be identical to a removal of a child.
- Ensure that staff are clear that income information from the young adult does not have to be continuously collected and IV-E redeterminations do not need to occur after the month of the VPA or removal.

III. Licensure of Placements and IV-E Reimbursement

Question 1: Do placements for youth 18-21 need to be licensed to be IV-E reimbursable?

Response: No. 42 U.S.C.A. 672 (c)(2) clarifies that states can receive IV-E reimbursement for "a supervised setting in which the individual is living independently." This setting need not be licensed, but the state does need to establish standards for approval of these settings. The standards can be age-appropriate and need not match licensure standards. If a youth remains in a foster home or group home that is licensed, the requirements of licensure must be fulfilled, but there is an opportunity to develop a placement array that is reimbursable under the category of "semi-supervised setting."

Authority:

- Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008, Program Instruction, p. 9, ACYF-CB-PI-10-11 (July 9, 2010).

  > "The title IV-E requirements for foster family homes and child care institutions apply if a youth age 18 or older is placed in such a setting, including provisions for licensure or approval, background checks and safety considerations."

- Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008, Program Instruction, p. 9, ACYF-CB-PI-10-11 (July 9, 2010).

  > "Therefore, a title IV-E agency has the discretion to develop a range of supervised independent living settings which can be reasonably interpreted as consistent with the law, ***including whether or not such settings need to be licensed and any safety protocols that may be needed.*** For example, a title IV-E agency may determine that when paired with a supervising agency or supervising worker, host homes, college dormitories, shared housing, semi-supervised apartments, supervised apartments or another housing arrangement meet the supervised setting requirement." (emphasis added).

Tips and Take-Aways

- Develop a structure for the category of placement, supervised setting in which a child lives independently, that fits your needs so that you can draw down IV-E for these non-licensed settings. Consider whether some of your non-licensed kinship homes could fit into this model as host homes or as the selected setting for a youth receiving a direct stipend for board and care. This structure would then be part of an amendment to the state's IV-E plan.

IV. Caseworker Visits

Question 1: Are there any exceptions to the monthly face-to-face caseworker visits?

Response: No. The federal law does not allow for any exceptions to this requirement. Video conferencing and skype are not considered acceptable alternatives.

Authority:

- Child Welfare Manual, 7.3. Title IV-B, Programmatic Requirements, Question 7, https://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=178

  "A State's standards must ensure monthly caseworker visits for children who are placed in foster care outside of the State. There are no exceptions permitted for State standards for at least monthly visits to children in foster care per section 422(b)(17) of the Act."

- Child Welfare Manual, 7.3. Title IV-B, Programmatic Requirements, Question 8, https://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=178

  "Videoconferencing or any other similar form of technology between the child and caseworker does not serve as a monthly caseworker visit for the purposes of meeting the requirements of section 422(b)(17) of the Social Security Act (the Act). Rather, a monthly caseworker visit must be conducted face-to-face and held in person."

Question 2: What strategies have states developed to address the cost of monthly caseworker visits to youth aged 18 and over who are placed out of state?

Response: Courtesy supervision can be requested through the Interstate Compact for states that accept ICPC requests for youth over age 18. Because many states do not accept ICPC requests for youth 18 and over, contracting with the public child welfare agency or a private agency in another state may be necessary.

Example Policy:

Below is the policy of LA County.

> Monthly visitation and service requirements apply to NMD[2]s placed both in- and out-of-state. Counties may request courtesy supervision through the Interstate Compact on the Placement of Children (ICPC) for nonminor dependents who are attending college or residing in an appropriate out-of-state placement.
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> However, not all states will accept an ICPC request or provide services/supervision for children in foster care beyond age 18. All efforts must be made to make arrangement for the supervision of NMDs, even if it requires contracting with a private agency in another

[2] NMDs are Non Minor Dependents are young adults between ages 18 and 21 in extended foster care in CA.

state. Visits must be face to face; video conferencing and Skyping are not considered acceptable methods for conducting monthly visits.

CSWs must contact the ICPC unit prior to placing a NMD out-of-state or recommending that a foster youth be placed out-of-state as a NMD in order to verify how the monthly contacts can be completed.

Because placement options for NMDs may involve roommates, CSWs must remain flexible in scheduling visits so as to respect the NMD's privacy while still meeting the federal requirement of visitation in the place of residence.[3]

Tips and Take-Aways

- Analyze current out of state placements.
  - How many?
  - Which states?
  - How long—school semesters or long-term?
  - Does NE have youth under 18 placed in those states?

- Determine a plan to provide monthly visits after:
  - Identifying which states will provide supervision through the ICPC, as a curtesy, or through an informal arrangement.
  - Identifying if there are other youth who are under age 18 who placed out of state for whom visits are mandatory and whether visits can be aligned.

- Determining whether cost to meet requirement outweighs the reduction of IV-B funds that result from not meeting the requirement.

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[3] This policy can be found at: http://policy.dcfs.lacounty.gov/content/Contact_Requirements_and.htm#Policy2