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Program Instruction

To: State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act, Indian Tribes, Tribal Organizations and Tribal Consortia (Tribes)

Subject: Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351) Comprehensive Guidance, Titles IV-B and IV-E Plan Requirements, Title IV-E Plan Amendment – Definition of "Child", Extension of Title IV-E Assistance, Patient Protection and Affordable Care Act (Public Law (P.L.) 111-148)

Legal and Related References: Titles IV-B and IV-E of the Social Security Act (the Act); P.L. 110-351; P.L. 111-148

Purpose: The purpose of this Program Instruction (PI) is to provide title IV-E agencies comprehensive information on the provisions of titles IV-B and IV-E as a result of the amendments made by the Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351. In addition to providing new guidance on the option for a title IV-E agency to extend assistance for the foster care maintenance, adoption assistance, and/or kinship guardianship programs to an eligible youth age 18 and older up to age 21, this instruction provides additional guidance on the other provisions of P.L. 110-351 and the flexibilities afforded to a title IV-E agency in complying with the law. We are also providing instruction on changes to the titles IV-B/IV-E plan requirements as a result of the Patient Protection and Affordable Care Act (P.L. 111-148).

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Section A: Title IV-E Definition of Child and Extending Assistance to Youth Age 18 and Older

Definition of Child for Title IV-E Foster Care, Adoption Assistance and, if applicable, Guardianship Assistance Programs

A title IV-E agency may exercise the option in section 475(8)(B) of the Act to adopt a definition of "child" for the title IV-E program that will allow it to provide foster care, adoption and, if applicable, guardianship assistance for eligible youth up to 21 years of age if the youth meets certain criteria established in section 475(8)(B) of the Act. The option is available at any time on or after October 1, 2010 to a title IV-E agency that elects to implement the option on a statewide/or service area wide basis per section 471(a)(3) of the Act. A title IV-E agency that does not extend assistance to a youth age 18 or older for a program must conform to the definition of "child" as an individual under age 18 as indicated in section 475(8)(A) of the Act, with exceptions. Those exceptions permit a title IV-E agency to provide title IV-E foster care maintenance payments to a youth who is age 18 and a full-time student completing secondary education or training per the State's 1996 title IV-A Aid to Families with Dependent Children (AFDC) plan and permit a title IV-E agency to continue adoption or guardianship assistance to disabled youth between the ages 18 and 21 (under an agreement). Please see section B for more detailed information specific to the extension of title IV-E foster care to youth age 18 and older and sections D and J regarding providing assistance to disabled youth who are in guardianship or who have been adopted.

The statute affords the title IV-E agency the option to select an age up to age 21; however, we encourage a title IV-E agency to expand their definition of "child" to age 21. If an agency wants to extend assistance beyond age 18 but select a definition of "child" lower than age 21 (i.e., age 19 or 20), the agency must include a written description to the Regional Office (RO), in the title IV-E plan amendment, as to why the agency is choosing a lower age (see section N). This description should include the programmatic or practice rationale for the lower age. The age the agency selects for the definition of "child" must apply to the title IV-E foster care, adoption assistance, and if applicable, guardianship assistance programs.

As further discussed below, a title IV-E agency may establish different criteria for meeting the education and employment conditions associated with the participation of youth age 18 or older. The title IV-E plan requirements in section 471 of the Act apply to youth in extended title IV-E assistance to the same extent as they apply for a child under the age of 18.

A title IV-E agency providing title IV-E assistance to a youth age 18 or older per section 475(8)(B) of the Act must amend its title IV-E plan (see section N for instruction on amending the plan) to ensure that an otherwise eligible youth meets the criteria listed below:

1. *Title IV-E Program Participation*:
    - The youth is in foster care under the responsibility of the title IV-E agency; or
    - The youth is part of an adoption assistance agreement that is in effect under section 473 of the Act and the youth had attained 16 years of age before the agreement became effective; or
    - The youth is part of a kinship guardianship agreement that is in effect under section 473(d) of the Act and the youth had attained 16 years of age before the agreement became effective; AND
2. *Age*: The youth has attained 18 years of age or older, up to age 21 (as elected by the title IV-E agency); AND
3. *Educational or Employment Conditions*: The youth meets at least one of the below listed conditions, as determined by the title IV-E agency:
    - Completing secondary education or a program leading to an equivalent credential (section 475(8)(B)(iv)(I) of the Act), e.g., a youth age 18 and older is finishing high school or taking classes in preparation for a general equivalency diploma exam.
    - Enrolled in an institution which provides post-secondary or vocational education (section 475(8)(B)(iv)(II) of the Act), e.g., a youth could be enrolled full-time or part-time in a university or college, or enrolled in a vocational or trade school.

- Participating in a program or activity designed to promote, or remove barriers to employment (section 475(8)(B)(iv)(III) of the Act), e.g., a youth could be in Job Corps or attending classes on resume writing and interview skills.

- Employed for at least 80 hours per month (section 475(8)(B)(iv)(IV) of the Act), e.g., a youth could be employed part time or full time, at one or more places of employment.

- Is incapable of doing any of the previously described educational or employment activities due to a medical condition (section 475(8)(B)(iv)(V) of the Act). If the youth is in foster care in this circumstance, the agency must provide regularly updated written or recorded information that addresses the medical condition and the youth's incapability in the youth's case plan. There is no requirement for the title IV-E agency to maintain a case plan on a youth who is adopted or in guardianship. We address documentation related to a youth who is adopted or in guardianship further below.

The title IV-E agency has the following discretion in relation to the employment and education conditions for extended assistance provided it is reasonable and consistent with Federal law:

- A title IV-E agency may include one or more of the above employment or education conditions for extended assistance in the definition of "child" for any of the title IV-E programs in operation. For example, a title IV-E agency may provide extended assistance to youth enrolled in post-secondary education only.

- The title IV-E agency will establish the criteria it will use to determine whether a youth meets the employment or education conditions above and/or whether a youth has a medical condition that renders him or her incapable of employment or education. The agency has the discretion to determine these criteria, with one caveat. The title IV-E agency must consider an otherwise enrolled youth on a semester, summer or other break to be enrolled in school for the purposes of this provision.

- The title IV-E agency will determine how it will verify or obtain assurances that the youth continues to meet the education or employment conditions and the frequency and nature of such verification.

- The title IV-E agency is not required to develop a case plan for an adopted youth or youth under a guardianship solely for the purpose of addressing why a youth is incapable of meeting the educational or employment activities due to a medical condition. The title IV-E agency has the flexibility to determine whether and how to document the medical condition for such youth once determined.

We are providing flexibility in applying the education and employment conditions because we want to encourage a title IV-E agency to take advantage of the option as soon as possible, even if the agency can do so on only a limited basis at this time. However, we encourage a title IV-E agency to consider how it can provide extended assistance to youth age 18 and older to the broadest population possible consistent with the law to ensure that that there are ample supports for older youth. We also encourage a title IV-E agency to use the John H. Chafee Foster Care Independence Program and the Education and Training Voucher Program (section 477 of the Act) to provide additional supports to youth to prepare them for employment and education.

Medicaid Eligibility

Under sections 473(b)(1) and 473(b)(3) of the Act, a youth on whose behalf title IV-E foster care maintenance payments or guardianship assistance payments are made, or who is subject to an adoption assistance agreement is categorically eligible for the title XIX (Medicaid) program available in the State of residence, including a youth up to age 21 per section 475(8)(B) of the Act. Such a youth is eligible for Medicaid (if available for such youth) whether or not the title IV-E agency in the State of residence has taken the option to provide extended assistance per section 475(8)(B) of the Act. A title IV-E agency should work with its Medicaid agency counterparts to learn about the Medicaid services available for older youth.[1]

Statewide Automated Child Welfare Information System

A State or Tribe that has elected to implement a Statewide Automated Child Welfare Information System (SACWIS) must support the extension of title IV-E assistance and additional client population through that system, as applicable. All requirements at 45 CFR Part 1355.52 through 1355.56 applies to extended title IV-E assistance.

Effective Date for the Definition of Child Age 18 and Older

A title IV-E agency may exercise the option to define "child" as age 18 or older (up to age 21) consistent with section 475(8) of the Act beginning on or after October 1, 2010. A title IV-E agency that exercises the option to provide title IV-E foster care, adoption and/or guardianship assistance for youth age 18 and older may claim allowable costs for the applicable title IV-E program option as early as the first day of the quarter in which the title IV-E agency submits an approvable title IV-E plan amendment to ACF (45 CFR 1356.20(d)(8)). Under title IV-E foster care, an agency may provide payments to older youth age 18 and older up to age 21 who were in foster care prior to October 1, 2010 as long as the youth meets all of the title IV-E eligibility requirements as explained below. Similarly, for title IV-E adoption and guardianship assistance, an agency may provide payments to adopted youth or youth in guardianship prior to October 1, 2010 who are age 18 and older up to age 21 for whom a title IV-E agreement under section 473 or 473(d) became effective after attaining age 16 and otherwise meet the title IV-E eligibility requirements.

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Section B: Provisions Specific to the Extension of Title IV-E Foster Care to Youth Age 18 and Older

The statutory amendments made to incorporate older youth up to age 21 into the title IV-E foster care maintenance payments program do not alter existing eligibility criteria with the exception of permitting title IV-E payments for a youth age 18 or older in a supervised setting in which the youth is living independently. However, we realize that States and Tribes with title IV-E plans may need to address the eligibility requirements in a different manner, as appropriate, for a youth age 18 or older. Therefore, we are providing the following information to explain the ways in which a title IV-E agency can take advantage of the option to extend assistance to youth age 18 or older consistent with the requirements of the law and the developmental needs of older youth.

A title IV-E agency can extend foster care assistance for a youth age 18 or older pursuant to section 475(8)(B) of the Act in a way that permits a youth to stay in foster care continuously or leave foster care for a period and return to foster care at some point after attaining age 18. Indoing so, however, the eligibility criteria in section 472(a)(2)(A) and (B) of the Act must be satisfied. The information below describes the ways in which these criteria can be satisfied.

Removal From Home

There are several ways to meet the removal from home criteria in section 472(a)(2)(A) of the Act for the youth age 18 or older depending on whether a youth is continuing in foster care after attaining age 18 or reentering foster care after attaining age 18:

- *Court ordered removal prior to age 18* - When a child is removed from home prior to age 18 pursuant to a judicial determination that it was contrary to the welfare of the child to remain in the home and that reasonable efforts have been made to keep the child in the home and the child remains in foster care continuously, no new court ordered removal is required at the age of 18, or older, to remain eligible for title IV-E foster care maintenance payments. Such a child will be considered to meet the criteria in section 472(a)(2)(ii) of the Act while remaining in foster care.

- *Voluntary placement agreement prior to age 18* - When a child is removed from home prior to age 18 pursuant to a voluntary placement agreement entered into between the child's parents/legal guardian and the title IV-E agency, no new voluntary placement agreement is required after the youth attains the age of 18 for title IV-E purposes as long as the youth remains continuously in foster care. See below for additional details related to voluntary placement agreements.

- *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.

- *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.

- *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.

For title IV-E purposes, voluntary placement agreements must meet the requirements of sections 472(e) and (f) of the Act and 45 CFR 1356.22, including the requirement that there be a judicial determination that remaining in foster care is in the child's best interests if title IV-E foster care maintenance payments are to continue beyond the first 180 days of the voluntary placement. The title IV-E agency has the option whether to accept voluntary placement agreements for title IV-E purposes for a child/youth of any age up to age 21 (i.e., either on behalf of a child under age 18 or for youth age 18 or older). A title IV-E agency may elect to meet the criteria in section 472(a)(2)(A) of the Act by voluntary placements at any time by amending its title IV-E plan prior to claiming Federal reimbursement for such placements.

Placement and Care Responsibility

There are several ways in which the title IV-E agency can obtain placement and care responsibility of youth age 18 or older pursuant to section 472(a)(2)(B) of the Act:

- *Written authorization prior to age 18* – The youth in foster care may provide written authorization giving the title IV-E agency continued placement and care responsibility for the youth after attaining age 18. Similar to existing policy, this written authorization must be provided before the youth ages out of foster care or court jurisdiction ends for the agency's placement and care responsibility to continue after reaching age 18.

- *Voluntary placement agreement after attaining age 18* –If the title IV-E agency accepts voluntary placement agreements from a child age 18 or older, this same voluntary placement agreement can authorize that the title IV-E agency have placement and care responsibility of the child.

- *Court orders after attaining age 18* – To the extent that court jurisdiction extends to a youth age 18 or older, court orders can provide the title IV-E agency with placement and care responsibility.

AFDC Program Criteria

A child/youth must have met the AFDC eligibility requirements per section 472(a)(3) of the Act at

the time of removal from the home to be eligible for title IV-E foster care. For a youth age 18 or older who is entering or reentering foster care after attaining age 18 consistent with the criteria above, AFDC eligibility is based on the youth without regard to the parents/legal guardians or others in the assistance unit in the home from which the youth was removed as a younger child (e.g., a child-only case).

AFDC Redeterminations. As indicated in policy issued at CWPM 8.3A.4, 8.3A.10, and 8.4A on April 8, 2010, we have eliminated AFDC redeterminations to ease an administrative burden we now believe is unnecessary. The title IV-E agency must establish AFDC eligibility at the time the child is removed from home or a voluntary placement agreement is entered. We note that it is not possible to implement the option to extend title IV-E assistance to youth in foster care who are age 18 or older as permitted by P.L. 110-351 and require such youth to be subject to AFDC redeterminations. Specifically, youth age 19 or older cannot meet the AFDC eligibility requirements because they would not be able to meet the definition of a "needy child" in former section 406 of the Act. This clearly is inconsistent with the law's amendments to provide an option for extended title IV-E assistance to older youth. For the purpose of a title IV-E eligibility review, we will not review whether the title IV-E agency conducted annual AFDC redeterminations for a child in the sample.

Title IV-A Option to Continue Title IV-E Foster Care to Certain Youth in School. A title IV-E agency may provide foster care maintenance payments on behalf of youth who have attained age 18, but are under the age of 19, and who are full-time students expected to complete their secondary schooling or equivalent training before reaching age 19 whether or not the agency exercises the option to provide title IV-E payments to children over age 18 under section 475(8)(B) of the Act. An agency may continue to apply this policy only if it was contained in the agency's title IV-A AFDC plan, as in effect on July 16, 1996, of the State the child was living in at removal; but is not required to continue this policy.

No further action is required for a title IV-E agency that provides title IV-E foster care payments through the title IV-A option for 18-year-olds in secondary school or equivalent training, but does not take the option to provide extended title IV-E foster care assistance under section 475(8)(B) of the Act. As such, the agency must continue to evaluate case by case whether to continue title IV-E foster care payments for the youth based on whether the youth is expected to finish secondary schooling or equivalent training before attaining age 19. An agency that continues the title IV-A option and also elects to provide extended title IV-E foster care assistance under section 475(8)(B) of the Act may do one of the following: 1) determine whether continued title IV-E foster care maintenance payments are warranted based on the title IV-A standard; or, 2) determine if extended title IV-E foster care assistance is warranted based on the education and employment conditions in section 475(8)(B)(iv) of the Act.

Please note that a Tribal title IV-E agency may either follow the AFDC option (if selected) in the State in which the child was removed (section 479B(c)(1)(C)(ii)(II) of the Act), or may choose to provide extended assistance per section 475(8)(B) of the Act as selected in the Tribal title IV-E plan.

Supervised Independent Living Settings

In order for the title IV-E agency to provide title IV-E foster care maintenance payments, an otherwise eligible child age 18 or older must be placed in a licensed foster family home, child-care institution, or a supervised setting in which the individual is living independently per section 472(c)(2) of the Act. 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 (see sections 471(a)(10) and 471(a)(20)(A) and (B) of the Act and 45 CFR 1355.20 and 1356.30).

At this time, however, we have no forthcoming regulations that will prescribe the kinds of living arrangements considered a supervised setting, the parameters of supervision, or any other conditions for youth living independently. 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. We encourage the title IV-E agency to be innovative in determining the best living arrangements that could meet an older child's needs for supervision and support as

he/she moves toward independence. Further, we note that a title IV-E agency should continue to work with youth who are in supervised independent living settings to form permanent connections with caring adults. This could take the form of determining whether guardianship, adoption or living with other caring adults remains appropriate options for an older youth, and if so, helping the youth to work towards those outcomes.

Foster Care Maintenance Payments

The title IV-E agency must provide an eligible child a title IV-E foster care maintenance payment consistent with section 475(4)(A) of the Act and 45 CFR 1355.20. The items of cost in the foster care maintenance payment definition in the law and regulations are the same for a youth of any age. Such payments must be paid through a foster parent, child placement or child care agency, a child care institution or the supervised setting as required by section 472(b) of the Act. Foster care maintenance payments must be paid through the provider (i.e., the foster parent or child care institution) or child-placing/caring agency, unless the child is age 18 or older and living independently in a supervised setting in foster care. For a youth age 18 or older living independently in a supervised setting, there may be situations in which no actual provider or other child placing intermediary is involved. In those situations the title IV-E agency may (but is not required to) pay all or part of the foster care maintenance payment directly to the youth.

Reasonable Efforts to Finalize a Permanency Plan

The provisions of section 472(a)(2)(A)(ii) of the Act and 45 CFR 1356.21(b)(2) which require the agency to obtain a judicial determination that the agency made reasonable efforts to finalize a permanency plan every 12 months apply to a child age 18 or older receiving title IV-E foster care maintenance payments who was removed due to a contrary to the welfare judicial determination (i.e., a court-ordered placement), but not to a youth removed from home via a voluntary placement agreement. We expect most youth in extended foster care to have a permanency plan of emancipation or independence, and therefore, the agency's efforts toward that goal would include activities outlined in a youth's transition plan and/or case plan. Therefore, we will accept judicial determinations for reasonable efforts to finalize a permanency plan that address the agency's efforts to prepare the child for independence.

Finally, we note that while this finding is a judicial determination, there are no Federal requirements that prescribe the forum in which such findings are made for youth of any age. Accordingly, any duly authorized member of the judiciary consistent with State/Tribal law may make these judicial determinations and they may be done outside of a court hearing.

Case Review Requirements

The case review requirements in section 471(a)(16) of the Act (which are defined further at section 475(5) of the Act) apply to all children under age 18 who are in foster care, under the placement and care of the title IV-E agency and those children age 18 or older on whose behalf a title IV-E foster care maintenance payment is made. We encourage the title IV-E agency to fulfill these requirements for older youth in a developmentally-appropriate manner which is responsive to a youth's needs. The following list provides some examples of ways in which a title IV-E agency could meet the law's case review requirements for youth age 18 or older:

- Case plans are developed jointly with the youth in foster care and include discussions which reflect the supervised settings, foster family homes or child care institutions the youth believes are consistent with what the youth needs to gain independence. The case plan reflects agreements made between the agency and the youth to obtain independent living skills and the benchmarks that indicate how both know when independence can be achieved (sections 471(a)(16) and 475(1) of the Act; 45 CFR 1356.21(g)).

- Periodic reviews involve youth and focus on whether the youth is safe in his/her placement, whether continued foster care is appropriate, whether appropriate and meaningful independent living skill services are being developed and the progress made towards achieving independence on a projected date. Periodic reviews are held by courts or by an administrative panel of appropriate persons, including at least one of whom is not responsible for case management (sections 475(5)(B) and 475(6) of the Act).

- Permanency hearings are held under conditions that support active engagement of the youth in key decisions. Permanency hearings can be held by a court or by an administrative body

appointed or approved by the court. Permanency hearings provide ample time and opportunity for the youth to discuss his/her transition plan (section 475(5)(C) of the Act and 45 CFR 1356.21(h)).

- A title IV-E agency may make appropriate case-by-case decisions about filing petitions for termination of parental rights (TPR) and document such decisions in the case plan. Compelling reasons for not filing a TPR could include that adoption is not the appropriate permanency goal or that no grounds to file a petition exist for an older child (sections 475(5)(E) and (F) of the Act; 45 CFR 1356.21(i)).

This above list is not exhaustive. See also section C that discusses the transition plan for emancipating youth.

Caseworker Visits

Monthly visit standard. Section 422(b)(17) of the Act requires State and Tribal title IV-B/IV-E agencies to describe standards for monthly caseworker visits with children in foster care. This provision also applies to a youth in foster care age 18 or older per section 475(8)(B) of the Act on whose behalf a title IV-E foster care maintenance payment is made.

Consistent with the law, at a minimum, the standards are to ensure that caseworker visits are well-planned and focused on issues pertinent to case planning and service delivery to ensure the safety, permanency and well-being of the youth. Visits may be conducted by any caseworker with whom the title IV-B/IV-E agency has assigned or contracted case management or visitation responsibilities and must be held face-to-face. Within these parameters, the agency may determine which caseworkers are appropriate to conduct the visits. We encourage the title IV-E agency to engage youth fully in determining how to balance meeting the youth's needs with the requirement for the caseworker to visit the youth monthly. Further, we support practices which allow the youth and agency to determine jointly the content of the monthly visits. A State agency may use the funding provided under sections 433(e) and 436(b)(4) of the Act to support monthly caseworker visits to youth in foster care, including those age 18 or older. At this time, the law does not authorize this funding to a Tribal agency.

State caseworker visit data. States also are required to provide us with data on the percentage of children who are visited by their caseworkers on a monthly basis and establish targets to ensure that 90 percent of children in foster care are visited pursuant to sections 424(e)(1) and (2) of the Act. As all States had already established such baselines in 2007 and their annual targets, and we had previously instructed States to exclude youth age 18 and older from this data report in most circumstances (CWPM 7.3 Q/A #6) we will not require States that opt to extend title IV-E foster care assistance to include youth age 18 or older in such data reporting for Fiscal Year (FY) 2010 or 2011. However, we intend to reconsider this exception if the caseworker data provision is reauthorized or there is any other relevant change in law.

Other provisions and requirements

We wanted to highlight some other provisions that apply to a youth in foster care age 18 and older receiving title IV-E foster care maintenance payments in response to questions that we have received. This list is not intended to be exhaustive and we encourage the title IV-E agency to work with the CB RO staff for additional clarifications:

Adoption and Foster Care Analysis and Reporting System (AFCARS). A title IV-E agency that exercises the option to extend assistance to youth age 18 or older must collect and report data to AFCARS on all youth receiving a title IV-E foster care maintenance payment (45 CFR 1355.40).

National Youth in Transition Database (NYTD). A title IV-E agency that exercises the option to extend title IV-E foster care assistance to youth age 18 or older must consider youth receiving a title IV-E foster care maintenance payment as in foster care for the purposes of the NYTD reporting (45 CFR 1356.81).

Monitoring. The child and family services review and title IV-E eligibility review samples are drawn from AFCARS, and therefore, will include a child/youth age 18 or older receiving a title IV-E foster care maintenance payment during the period under review (45 CFR 1355.31 – 37 and 1356.71).

Child of a parent in foster care. Section 475(4)(B) of the Act requires that foster care maintenance payments for a parent in foster care cover the foster care maintenance costs for the parent's child if

that child is placed with the parent in the same foster family home or child care institution. For a title IV-E agency that extends title IV-E foster care assistance to youth age 18 or older, the requirement to cover the costs of the child of the parent in foster care will also apply to the youth age 18 or older in a foster family home, child care institution or supervised independent living setting. Further, consistent with section 472(h)(2) of the Act, a child of the youth in foster care whose costs are covered by the title IV-E foster care maintenance payment is categorically eligible for the title XIX Medicaid program available in the State of residence, regardless of whether the title IV-E agency in the State of residence has also elected to extend title IV-E foster care assistance to youth age 18 or older. See also CWPM Section 8.3A.5.

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Section C: Transition Plan for Emancipating Youth

The case review system at section 475(5)(H) of the Act requires that the title IV-E agency caseworker, or other child representatives as appropriate, assist and support a youth in developing a transition plan as he/she ages out of foster care. More specifically, the transition plan must be developed during the 90-day period before the youth attains age 18, or if applicable, before the later age, for a youth in extended foster care per section 475(8)(B) of the Act. Transition planning is for youth of these ages who are in foster care as defined in regulations at 45 CFR 1355.20.

The transition plan must be personalized at the direction of the child, be as detailed as he or she chooses, and include specific options regarding housing, health insurance, education, local opportunities for mentors and continuing support services, work force supports and employment services (section 475(5)(H) of the Act). We encourage the caseworker to include information in the plan relating to sexual health, services, and resources to ensure the youth is informed and prepared to make healthy decisions about their lives.

Further, as the title IV-E agency is aware, this provision prescribes transition plan details at a specific point in the youth's foster care experience, however, the law requires the title IV-E agency to conduct other planning activities for independent living for older youth. In particular:

- Case plans, where appropriate, must include a written or recorded description of the programs and services which will help a child age 16 or older prepare for the transition from foster care to independent living (sections 471(a)(16) and 475(1)(D) of the Act).
- Permanency hearings, in the case of a child age 16 or older, must determine the services needed to assist the child to make the transition from foster care to independent living (sections 471(a)(16) and 475(5)(C)(i) of the Act).

We encourage the title IV-E agency to use these and any other available opportunities to help youth plan for their future and to use the transition plan to build on these earlier planning efforts. The courts can play an important role in monitoring the development of the transition plan.

Further, we note that while the transition plan is developed during a particular period of time prior to aging out of foster care, the title IV-E agency should begin earlier to engage and prepare youth to develop the plan. Therefore, we expect the title IV-E agency to use the time well in advance of the 90-day period to prepare and fully engage a youth in his or her transition plan development. For example, an agency can best prepare the youth to direct their transition plan if the agency informs the youth ahead of time of the transition plan's purpose and importance, how they are expected to participate in the transition plan, who they can invite to the planning sessions to represent their needs, how it is different or similar to other planning activities, what options are available in the topics that must be covered (e.g., housing and health insurance) and how to ask questions that can uncover further information or options that may not have been raised by the agency. An agency could also encourage and support (e.g., through facilitation) the formation of youth peer groups to develop youth-led recommendations on what youth need to know prior to transition planning sessions and how to advocate for themselves.

The transition plan is not required should a youth leave foster care more than 90 days before his 18th birthday or older age designated in the IV-E plan pursuant to section 475(8)(B) of the Act, nor can it be delayed to the age of 18 or older age, as applicable.

Finally, section 2955(a) of the Patient Protection and Affordable Care Act (P.L. 111-148) amends the transition plan requirement effective October 1, 2010. This legislation will also require the transition plan to include information on the importance of designating someone to make health care

treatment decisions on behalf of the youth in foster care if the youth is unable to do so and does not have or want a relative who would otherwise be so designated under State/Tribal law to make such decisions. The law provides the child with the option to execute a health care power of attorney, health care proxy, or other similar document recognized under State/Tribal law.

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Section D: Guardianship Assistance Program

We have provided guidance in ACYF-CB-PI-10-01 and the CWPM regarding the option for a title IV-E agency to have a Guardianship Assistance Program (GAP). This option remains available to a title IV-E agency at any time that it elects to implement the GAP on a statewide/or service area wide basis per section 471(a)(3) of the Act. We are encouraged by the interest in this option exemplified by the several title IV-E agencies to date that have chosen to submit a title IV-E plan to provide kinship guardianship assistance. To ensure that all title IV-E agencies are aware of how the GAP may work for its title IV-E program, please note the following additional information:

Relative Guardians

A title IV-E agency has discretion to define the term "relative" for the purposes of the title IV-E GAP. This means that we will accept a title IV-E plan or amendment that contains a reasonable interpretation of a relative, including a plan that limits the term to include biological and legal familial ties or a plan that more broadly includes Tribal kin, extended family and friends, or other 'fictive kin'. Please note that this does not change the statutory and regulatory definition of a "specified relative" as used in sections 472 or 473 of the Act.

We believe it is ideal for the title IV-E agency to use a consistent definition of relative for the GAP and the relative notification provision at section 471(a)(29) of the Act, to the greatest extent possible. This will support the identification and notification of potential relatives and/or other kin, as applicable, who will be informed of their options to care for the child and, if appropriate, receive title IV-E kinship guardianship assistance on the child's behalf. See also section H on notifying relatives of a child's placement into foster care.

Conditions for Guardians or Guardianship

A title IV-E agency has the discretion to establish the conditions in the State/Tribe under which a person may qualify to be a child's guardian or enter into a legal guardianship arrangement with the title IV-E agency. The criteria in sections 473(d) and 471(a)(20)(C) of the Act are considered eligibility criteria for the title IV-E GAP. For example, a title IV-E agency may:

- Require a child to be in foster care for more than a consecutive six-month period, spend more than six-months living with the relative guardian in foster care, and/or meet the consecutive six-month period immediately prior to the guardianship;
- Target a certain age group for guardianship, such as children over the age of 12;
- Require the relative guardian to inform the agency if the child's biological parents plan to stay with the guardian on a long term basis; or,
- Require cooperation with child support enforcement regarding the child's parents.

We note that while all of the above conditions are allowable; when applied as a broad policy they may not always serve an individual child's best interests. A title IV-E agency that sets policy narrowing the population of children or relative guardians that can be subsidized may be limiting its options to provide permanency for children who would otherwise remain in foster care. Rather, a title IV-E agency could accomplish similar goals of ensuring that guardianship is the appropriate permanency option by either establishing practice-level guidance that clarifies which children or relatives may be best suited for guardianship or otherwise making case-by-case determinations of the following eligibility criteria in the law (section 473(d)(3)(A)(ii) through (iv) of the Act):

- being returned home or adopted are not appropriate permanency options for the child;
- the child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child; and,

- with respect to a child who has attained 14 years of age, the child has been consulted regarding the kinship guardianship arrangement.

Agreement Terms and Payments

The title IV-E agency must enter into guardianship agreements with the prospective guardians of eligible children and include specific terms in those agreements of the amount of payments and manner in which payments may be adjusted pursuant to section 473(d)(1)(A) and (B) of the Act. Agreement terms may include adjusting the guardianship payment amount as the child ages or as needs change, as long as the guardianship payment does not exceed the title IV-E foster care maintenance payment the child would have received if the child had remained in a foster family home (section 473(d)(2) of the Act). Per instruction in ACYF-CB-PI-10-01, the agency may also amend an existing agreement under certain conditions. Once a child is determined eligible for the GAP, payments can continue in accordance with the terms of the GAP agreement, unless the agency determines that one of the following conditions applies to require the termination of assistance under section 473(a)(4) of the Act:

- The title IV-E agency determines the relative guardian(s) are no longer legally responsible for a child under the age of 18.
- The agency determines that the relative guardian(s) are no longer providing any support for a child/youth of any age.
- The child attains age 18, or if applicable, the child:
    - attains the greater age of extended assistance to children in guardianship that the title IV-E agency implemented under section 475(8)(B)(i)(III) of the Act; or
    - attains 21 years of age if the title IV-E agency determined the child has a mental or physical handicap which warrants the continuation of assistance.

Please note that the title IV-E agency may provide title IV-E kinship guardianship assistance payments up to age 21 for a youth who has a physical or mental disability that warrants the continuation of assistance. The agency can continue assistance whether or not the agency has opted to extend title IV-E assistance to a youth age 18 or older for a child in guardianship per section 475(8)(B) of the Act.

The title IV-E agency has the discretion within the above broad parameters to establish how it will evaluate, reevaluate or terminate GAP agreements. For example, a title IV-E agency may establish agreements that:

- Specify how the agency defines whether a guardian is providing "any support to" or remains "legally responsible for the support of" the child so that it is clear under which circumstances the agreement will be terminated;
- allow the agency to suspend or discontinue guardianship assistance payments when a certain event occurs, such as when a child reenters foster care or another out-of-home setting;
- require annual or periodic renewals of agreements that confirm that the guardian continues to provide any support for GAP payments to continue;
- require the guardian to report how a youth age 18 or older meets the educational or employment conditions;
- require the guardian to report how a youth age 18 or older meets conditions for a disability;
- reduce GAP payments when other sources of income are received by the guardian on behalf of the child; and/or,
- clarify that GAP payments may continue to be paid on behalf of the child if the child moves to attend post-secondary school or otherwise lives independently of the guardian, as long as the guardian continues to provide any support to the child.

The above list is not exhaustive. Relative guardians receiving assistance must keep the title IV-E

agency informed of circumstances that would make them ineligible for the payments or eligible for the payments in a different amount (section 473(a)(4) of the Act). We note that the flexibilities above are distinct from those of the title IV-E adoption assistance program because the GAP is an optional title IV-E program and there are different statutory language and purposes for each program.

Siblings and GAP Payments

A title IV-E agency may, but is not required to, make GAP payments pursuant to a kinship guardianship agreement on behalf of each sibling of an eligible child who is placed with the same relative under the same kinship guardianship arrangement if the title IV-E agency and the relative guardian agree that the placement is appropriate (section 473(d)(3)(B) of the Act). For title IV-E GAP payments to be made on behalf of a sibling of an eligible child, the title IV-E agency must enter into a guardianship agreement that meets the requirements of section 473(d)(1) of the Act, including paying the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child to the extent the total cost does not exceed $2,000, prior to the guardian obtaining legal guardianship of the sibling. The amount of a title IV-E guardianship assistance payment for a sibling of an eligible child may not exceed the title IV-E foster care maintenance payment the sibling would have received if the sibling had remained, or had the sibling been placed, in a foster family home (section 473(d)(2) of the Act). Per instruction in ACYF-CB-PI-10-01, the agency may also amend an existing agreement under certain conditions.

The sibling is not required to meet the eligibility criteria in section 473(d)(3)(A) of the Act to receive kinship guardianship assistance payments or for the legal guardian to be reimbursed for the nonrecurring expenses related to costs of the legal guardianship of the sibling to the eligible child. The order of sibling placement with the guardian and finalization of the guardianships does not matter.

A title IV-E agency has the discretion to reasonably define sibling for the purposes of the GAP program. This means that we will accept a title IV-E agency's plan amendment that: includes siblings related by biological, marital or legal ties (e.g., inclusive of step-siblings, half-siblings and adoptive siblings); considers as siblings only those children who were removed from the same household; or, limits siblings to those children who were in foster care at the same time and placed in the guardian's home simultaneously. This is not an exhaustive list of the possible options for defining siblings.

For example, a 14-year-old child is in the legal guardianship of his grandmother and has been for the past three years. The 14-year-old was not eligible for the GAP program at the time of the agreement and legal guardianship (for example, because the title IV-E agency did not have a GAP plan at the time or the grandmother was not a licensed foster family home). The grandmother is now a licensed foster family home providing care for the 12-year-old sibling to the 14-year-old child who has been eligible for title IV-E foster care maintenance payments for six consecutive months. The title IV-E agency determines that neither reunification nor adoption is appropriate for the 12-year old and all other eligibility factors are met. The title IV-E agency amends the agreement with the guardian of the 14-year-old to include the 12-year old sibling, and provides a title IV-E GAP payment to the grandmother on behalf of both children once the eligible child's legal guardianship is finalized.

Since the title IV-E agency is required to conduct Federal Bureau of Investigation (FBI) fingerprint-based checks of the National Crime Information Databases (NCID) on the guardian and child abuse and neglect registry checks on the relative guardian and other adults in the home in order to be eligible for GAP payments on behalf of an eligible child, the agency is not required to conduct these checks separately for the eligible child's sibling. A title IV-E agency may, however, conduct additional checks on the guardian if it so chooses.

Consecutive Months

One of the eligibility criteria for title IV-E kinship guardianship assistance payments is that a child be eligible for title IV-E foster care maintenance payments during at least a consecutive six-month period during which the child resided in the home of the prospective relative guardian who was licensed or approved as a foster family home (section 473(d)(3)(A)(i)(II) of the Act). While the Act does not require title IV-E foster care maintenance payments be paid on behalf of the child, it does require that such a child meet all eligibility criteria pursuant to section 472(a), (b) and (c) of the Act and 45 CFR 1356.21 while in the home of that fully licensed or approved relative foster parent for a

consecutive six-month period.

A child is not required to be eligible for or receive title IV-E foster care maintenance payments for every day in a month for such a month to be considered 'consecutive' for the purposes of GAP eligibility. The title IV-E agency can follow our existing policy guidance for title IV-E foster care maintenance payments eligibility to determine whether a child could be eligible in a given month. For example, in the CWPM 8.3B Q/A #7, we explain that an otherwise eligible child who is absent from the home due to running away or hospitalization, among other reasons, for up to 14 days in a month and returns to the same provider is eligible for a title IV-E payment for the entire month, but one who is absent for more than 14 days is eligible for only the portion of the month that he was with the provider. Also, in CWPM 8.3A.4 Q/A #1 we explain the circumstances in which title IV-E foster care eligibility may continue for a child who returns to a foster care placement after an interruption due to detention or hospitalization.

Medicaid

Please note that the law at section 473(b)(3)(C) of the Act requires that a title IV-E guardianship assistance payment be made to an eligible child, or a sibling to an eligible child, for a child to be categorically eligible for the title XIX Medicaid program available in the child's State of residence. This means that a payment of any amount must be paid on an ongoing basis (e.g., a dollar each month), for the title XIX Medicaid agency to consider the child categorically eligible for Medicaid.

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Section E: Enrolling Children in School, Educational Stability and Payments for School Transportation

School Enrollment

A title IV-E agency must assure in the title IV-E plan that each child receiving a title IV-E payment who has attained the age for compulsory school attendance is a full-time elementary or secondary student in a school, in an authorized independent study program, or is being home schooled consistent with the law of the State or other jurisdiction in which the school, program or home is located. Alternatively, the title IV-E agency must assure that such a child has completed secondary school or is incapable of attending school full time due to a medical condition as established in section 471(a)(30) of the Act.

To be considered a full-time student at a school, the child has to be enrolled or in the process of enrolling in the school. We encourage the title IV-E agency to work with their local educational agency to identify and address any barriers to expeditious enrollment in schools for children and consider further efforts that may be necessary to enroll children who must be moved across jurisdictions. For example, a title IV-E agency may address school enrollment by creating an "education passport" or an education file for the child which includes all essential documents needed to enroll the child in a school. It may also be helpful for a title IV-E agency to identify those who have expertise on educational issues who can serve as points of contact and may aid in the continuity of services when addressing educational stability for children in foster care. The courts can also play an important role in educational stability.

If a child in foster care is incapable of attending school full time due to a medical condition, the title IV-E agency must regularly (as determined by the title IV-E agency) document and update the incapability in the child's case plan. The agency should update the status of the child's medical condition whenever the child's case plan is updated. The title IV-E agency is not required to develop a case plan for an adopted child or a child under a guardianship solely for the purpose of documenting the child's medical condition and therefore, the agency may determine whether and how to document the child's medical condition.

This is a title IV-E plan requirement, and therefore, does not place conditions on a child's title IV-E eligibility. A title IV-E agency has the flexibility to determine how to assure that it is meeting these requirements, the frequency of any procedures for doing so, and how the requirements are documented (see CWPM section 8.4 Q/A #3). As part of this assurance, we encourage an agency to work to ensure that children are not only enrolled, but are in fact attending school. This could be accomplished by documenting children's attendance or establishing methods to identify patterns of chronic absence from school. We also encourage the title IV-E agency to monitor the progress the child is making in school consistent with case plan requirements in section 475(1)(C) of the Act.

Educational Stability

A title IV-E agency is required to include a plan for ensuring the educational stability of a child in foster care in the child's case plan as established in section 475(1)(G) of the Act. The plan must include:

1. an assurance that the child's placement in foster care takes into account the appropriateness of the current educational setting and the proximity to the school the child was enrolled in at the time of placement; and,

2. an assurance that the title IV-E agency has coordinated with the local education agency or agencies to ensure the child can remain in that school, or if remaining in that school is not in the best interests of the child, an assurance to enroll the child immediately in a new school with all of his or her educational records.

These assurances relate to the circumstances at the time of the child's initial placement into foster care, however, we encourage the title IV-E agency to update educational stability plans whenever a child changes schools during his/her stay in foster care. As part of the update process, the agency should determine if remaining in the same school is in the child's best interests. If it is in the child's best interests, the agency should coordinate with the local education agency to ensure the child can remain in the same school. If remaining in the same school is not in the child's best interests, the agency should coordinate with the local education agency to ensure that the child is immediately enrolled in a new school. While we are not setting specific time limits for enrollment, we expect the title IV-E agency to assure that children are enrolled or re-enrolled without delay both when the child is initially placed into foster care and, when applicable, each time the child is moved to a different foster care placement.

Section 475(1)(G) of the Act is a case plan requirement that falls under the guidance provided in 45 CFR 1356.21(g), and as such, the educational stability plan must be a written part of the child's case record which is jointly developed with the child's parents or guardians no later than 60 days after a child's removal from the home, and every six months thereafter. We encourage the title IV-E agency to specify the parties other than the caseworker and the child's parents who should participate in discussions or decisions related to the educational stability plan. For example, the agency could delineate the circumstances in which the youth, school personnel or education advocates, foster parents, the child's attorney, guardian ad litem, and other persons involved in case planning for the child are a part of the educational stability planning process. If the agency determines that it is not in the child's best interests to remain in the same school, the rationale for this decision must be documented in the case plan. We encourage the title IV-E agency to develop a standard and deliberate process for determining best interests for this provision, guiding who is responsible for decision-making, and properly documenting the steps taken to make the determination.

The title IV-E agency is vested with the responsibility for making individual placement decisions on a case-by-case basis on behalf of a child in foster care. As such, we realize that the agency will be balancing the child's needs for proximity to the family, the available foster care resources, along with the appropriateness of the child's current educational setting, among other things. The title IV-E agency also has the flexibility to determine which factors will be examined in determining whether remaining in the school of origin is in the child's best interests. Some examples of factors the agency may consider are: the child's preference to change schools or remain in the current school; the safety of the child; and the appropriateness of educational programs in the current school or another school and how each school serves or can serve the child's needs (including special education and other interests). It should be noted that the cost of school transportation should not be a factor in determining the best interest of the child for school selection. (See *Payments for School Transportation* below.)

Payments for School Transportation

The definition of foster care maintenance payments now includes the cost of reasonable travel for the child to remain in the same school he or she was attending prior to placement in foster care (section 475(4) of the Act). The payment may include these costs regardless of whether the child is in his or her initial foster care placement or subsequently moves to another foster care placement. The title IV-E agency has the discretion to determine what is considered reasonable travel in examining factors such as cost, distance, and length of travel. As with any cost enumerated in the

definition of foster care maintenance payments in section 475(4) of the Act, the title IV-E agency may decide which of the enumerated costs to include in a child's foster care maintenance payment. The title IV-E agency may include the cost of reasonable travel for the child to remain in the same school in the child's foster care maintenance payment paid to the child's provider or may make a separate payment directly to the transportation provider. In addition, transportation costs associated with the child's attendance at his or her school of origin remain allowable administrative costs under title IV-E because such transportation is related to case management and is therefore necessary for the proper and efficient administration of the title IV-E plan (see CWPM section 8.1B and 45 CFR 1356.60(c)(2)).

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Section F: Health Care Oversight and Coordination Plan

As part of the title IV-B plan, State and Tribal agencies are required to develop a plan for ongoing oversight and coordination of health care services for children in foster care, including mental health and dental health needs, in coordination with the State Medicaid agency, pediatricians, general practitioners and specialists (for example, obstetrics and gynecology (OB/GYN) doctors), other health care experts and child welfare experts (section 422(b)(15) of the Act). The plan must include an outline of a schedule for initial and follow-up health screenings (inclusive of age-appropriate sexual health screenings for youth); how medical information for children will be updated and shared (which may include the development of an electronic health record); steps to ensure the continuity of health care services (which may include the establishment of a medical home for every child in care and, as appropriate, a plan to transition from pediatric care); the oversight of prescription medicines; and how the agency actively consults and involves physicians and other professionals in assessing the health and well-being of children in foster care and in determining appropriate medical treatment for the children.

As part of the Child and Family Services Plan, the agency is required to submit a copy of the health care oversight and coordination plan, and provide an explanation of how health care experts were selected and how they and the Medicaid agency were involved in developing the health care oversight and coordination plan (ACYF-CB-PI-09-06 and ACYF-CB-PI-09-07). While we expect the agency to establish a health care oversight and coordination plan to fully comply with the statutory requirements, no changes have or will be made in connection with this requirement to the Round 2 Child and Family Service Review (CFSR) items for Well-Being Outcome 3 (children receive adequate services to meet their physical and mental health needs).

In general, a title IV-B agency has flexibility in how to implement the specific requirements of the plan and to decide whether to implement a single, agency-wide health care monitoring entity as part of this plan or put into place another mechanism to allow the agency to oversee and coordinate health care for children in foster care. The agency must include a schedule for health screenings that meets standards of medical practice. The schedule should mirror or incorporate elements of existing professional guidelines for physical, mental, and dental health screenings and standards of care into the plan to meet this requirement. In addition, as part of the plan for responding to the mental health needs of children and for providing oversight for prescription medicines, we encourage the agency to pay particular attention to oversight of the use of psychotropic medicines in treating the mental health care needs of children. We also encourage the agency to think about the needs that may be unique to particular populations. For example, for lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth, the agency could include steps in the plan to ensure that such youth receive competent, affirming, and confidential mental health and medical services.

The agency must include the health records of each child in foster care in the child's case plan, including the names and addresses of the child's health providers, a record of immunizations, the child's known medical problems, medications and other relevant health information (section 475(1)(C) of the Act). In addition, the agency must ensure that each child's health records are reviewed and updated at the time of each placement of the child in foster care and that such records are supplied to the foster parent or foster care provider with whom the child is placed at the time of each placement and at no cost to the child if the child exits foster care through emancipation (section 475(5)(D) of the Act). Therefore, we expect the agency to take an active role in both coordinating appropriate health care and maintaining regularly updated medical records for children in foster care. The courts can play an important role in health oversight and coordination.

Finally, the agency should be aware that section 2955(c) of P.L. 111-148 amends the health care

oversight and coordination plan effective October 1, 2010. The amendments require the title IV-B/IV-E agency to outline in the health care oversight and coordination plan the steps the agency will take to meet the health care components (i.e., options for health insurance and health care treatment decisions) of the transition plan development process for youth aging out of foster care in section 475(5)(H) of the Act. We will provide guidance at a later date on this provision.

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Section G: Sibling Placement

Under section 471(a)(31) of the Act, a title IV-E agency must make reasonable efforts to place siblings removed from their home in the same foster care, adoption or guardianship placement, or to facilitate frequent visitation or ongoing interactions (for example, letters, phone calls, text, email and other electronic communication) for those that cannot be placed together, unless it is contrary to the safety or well-being of any of the siblings to do so. If the agency determines that the siblings cannot be placed together and/or cannot have frequent visitation, the agency must document the reasons that it is contrary to the safety or well-being of the siblings to be placed together or to have frequent visitation. We encourage the agency to develop standard protocols for caseworkers to use in making decisions about when it would be contrary to a child's well-being or safety to place siblings together or provide for frequent visitation. A standard decision making tool could assist workers with guidelines in making this important decision, and address difficult situations, such as a sibling's refusal for visitation. We also encourage the agency to periodically reassess sibling visitation and placement decisions in cases where siblings are separated or not visiting to determine if a change is warranted.

At this time, we have no plans to issue regulations or policy that will define siblings or sibling groups, therefore, a title IV-E agency has the flexibility to define these terms for the purpose of this provision. (See also Section D of this document.) A title IV-E agency may establish its own standards for visitation and contact between siblings consistent with the law; however, sibling visitation or other ongoing interactions must be frequent. The agency can determine the most appropriate settings for visitations and protocols for supervision. For example, the facilitation of visits and ongoing interactions may be through other relatives, foster parents or mentors. We expect decisions on the frequency of sibling visitation and contact to be on a case by case basis, however, frequently means at least monthly

We expect the agency will revisit its existing sibling visitation and placement policies to determine if there are ways to bolster them to ensure that siblings are always placed together unless there is a bona fide safety or well-being concern that prevents placement together or frequent visitation. We also encourage the agency to review their foster family home recruitment strategies to determine if there are ways to increase the number of resource homes available for sibling groups. The courts can play an important role in sibling placement and sibling visitation.

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Section H: Notifying Relatives

A title IV-E agency must have a mechanism in place to exercise due diligence to identify and notify all adult relatives of a child's removal from his parents within 30 days of that removal (subject to exceptions due to family or domestic violence) (section 471(a)(29) of the Act). The notice must specify that the child has been or is being removed from the custody of the parent, the relative's options to participate in the care and placement of the child (pursuant to Federal, State and local law), any options that may be lost by not responding to the notice, the agency's requirements for becoming a foster family home and the additional services and supports for children in foster family homes. If the title IV-E agency has elected to operate a title IV-E guardianship assistance program, the notice also must describe how a relative guardian may receive such assistance on the child's behalf. We encourage the agency to develop protocols for caseworkers that describe the steps that should be taken to identify and notify relatives when a child is removed from his or her home. Further, we encourage the agency to go beyond this requirement to specify ways to identify and work with relatives when the agency first becomes involved with a child at risk of removal.

The title IV-E agency has the flexibility to determine what constitutes "due diligence" and when exceptions are appropriate. The title IV-E agency also has discretion to determine the scope of the terminology "all other adult relatives" and may also consult with the youth in identifying relatives. However, to the extent that it is practical, we suggest that the agency use the same definition of

"relative" for the relative notification provision and the title IV-E guardianship assistance program option (if the agency elects the guardianship option). We realize this approach may not work for all agencies; however, we want to encourage practices that would lead to early identification of relatives who could be potential guardians if reunification or adoption is ruled out. Further, the title IV-E agency may determine the method to use to provide relative notification of a child's removal, as long as that notification meets the specifications of the provision outlined above. We encourage the notice to be made via several different methods, such as in writing and orally. We also encourage the agency to carefully examine existing protocols for notifying relatives in the context of this provision to determine if there are ways to improve the agency's relative notification process generally, or in relation to specific groups of relatives, e.g., noncustodial parents and paternal relatives. The courts can play an important role in relative notification. This provision to notify relatives does not alter or supersede in any way the notice provisions of the Indian Child Welfare Act of 1978 (25 U.S.C 1912).

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Section I: Waiving Non-Safety Licensing Standards for Relatives

Section 471(a)(10) of the Act permits the title IV-E agency to waive, on a case-by-case basis, a State/Tribal non-safety licensing standard for a relative foster family home. A title IV-E agency has the discretion to determine what constitutes a non-safety standard for the purpose of meeting this requirement. A State or Tribe also has the discretion to establish licensing standards as long as they are applied equally (see ACYF-CB-IM-01-05). We expect the reason for the waiver to be clearly documented in the licensing/approval record for the relative foster home and the certification of licensure/approval to indicate its applicability to the specific relative child (see CWPM 8.3A.8c Q/A #1).

While the title IV-E agency has discretion to establish licensing standards and to determine which licensing standards are considered non-safety standards, the agency must still adhere to the Federal requirements under section 471(a)(20) of the Act (concerning criminal background and child abuse and neglect checks for relative foster and adoptive parents, and guardians, and disqualifying crimes).

Existing policy allows a title IV-E agency to claim title IV-E reimbursement on behalf of an otherwise eligible child when a State/Tribe's licensure requirement is met through a "variance." For title IV-E purposes, a "variance" is a mechanism that allows the State/Tribe to meet a standard for licensure in a way other than that specified in the State or Tribe's rule that governs licensure. A "variance" is acceptable on a case-by-case basis only if the State/Tribe has the authority to permit "variances," the purpose of the State/Tribe's licensing standard is achieved, and the safety of the child is maintained (see CWPM 8.3A.8c Q/A #14). A "variance" is different from a waiver in that it constitutes an alternative equivalent method to meet the standard, whereas a waiver disregards a set of specified requirements. For example, a "variance" may be granted when a foster family's well does not have potable water, and the family purchases bottled water for drinking. The "variance" from the original rule still meets the licensing requirement that the home is able to provide safe drinking water.

We encourage the title IV-E agency to use a variety of means to ensure that, when appropriate, relatives are able to meet licensing standards and provide a foster family home to a child safely. Relative foster parents are essential in keeping sibling groups together and for a title IV-E agency that has a GAP program, a licensed/approved relative allows an eligible child to move to permanency with the support of a subsidized guardianship, if appropriate. For example, a title IV-E agency may use title IV-E administrative funds to assist a relative foster family home to become licensed without the need for a waiver. The agency may claim administrative funds pursuant to section 472(i) of the Act for a child placed in a relative foster home whose application for licensure is pending. Further, policy allows a title IV-E agency to claim title IV-E administrative costs for items such as beds, cribs, and smoke detectors that are needed in order to license or approve a foster family home, but not for the costs of construction and renovation (CWPM 8.1 Q/A #3). Examples of the ways in which title IV-E agencies have waived non-safety licensing standards will be available in the Report to Congress on licensing standards for relatives, as mandated by section 104(b) of the Fostering Connections to Success and Increasing Adoptions Act of 2008.

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Section J: Adoption Assistance, Reinvestment, and Adoption Tax Credit

Adoption Assistance Eligibility

We have provided guidance in ACYF-CB-PI-09-10 on the revised eligibility criteria for the title IV-E adoption assistance program. Consistent with that guidance, a title IV-E agency must determine a child's eligibility for title IV-E adoption assistance based on whether the child is either an "applicable child" or not an "applicable child." Two sets of eligibility criteria will continue until Federal fiscal year (FFY) 2018, when the eligibility criteria related to a child who is not an "applicable child" is phased out. We provide additional clarification below of the "applicable child" criteria.

Applicable child criteria. For the upcoming FFY 2011, which begins on October 1, 2010, an "applicable child" includes:

- a child who will reach age 14 or older any time before the end of FFY 2011 and for whom an adoption assistance agreement is entered into during the FFY.
- a child who has been in foster care under the responsibility of the title IV-E agency for 60 consecutive months. The 60 consecutive-month period is any 60 consecutive months prior to the finalization of the adoption. We will not prescribe how a title IV-E agency must calculate this period. The title IV-E agency is responsible for adhering to a reasonable method of calculating the consecutive-month period for the purposes of this provision.
- a child who is a sibling of an "applicable child" by virtue of age or time in foster care and is placed in the same adoption arrangement as his/her sibling. We will not prescribe who is a sibling; rather the title IV-E agency may define "sibling" in a reasonable manner for the purposes of the adoption assistance program.

A title IV-E agency that identifies an "applicable child" as above must apply the applicable child eligibility requirements, inclusive of the special needs criteria, as described in section 473(a)(2)(A)(ii) of the Act. Most notably, the title IV-E agency may not apply AFDC eligibility criteria to a child who is an "applicable child." For each subsequent fiscal year, the age for an "applicable child" decreases by two years (i.e., age 12 in FFY 2012). We encourage the title IV-E agency to begin planning for children who will be eligible in coming years as the requirements are phased in.

Please note that if a child does not meet the "applicable child" definition in section 473(e) of the Act in the FFY in which the title IV-E agency enters into an adoption assistance agreement at the time of or prior to finalization, there is no opportunity for such a child to be determined title IV-E eligible as an "applicable child" during that adoption. As adoption assistance agreements under title IV-E must be in effect at the time of or prior to the finalization of adoption (45 CFR 1356.40(b)(1)), terminating an adoption assistance agreement done at the time of or prior to finalization and entering into a new agreement when the child turns an older age, will not result in title IV-E eligibility.

Assistance to adopted youth ages 18 to 21 with disabilities. P.L. 110-351 made conforming changes to section 473(a)(4) of the Act to restate that a title IV-E agency can continue title IV-E adoption assistance to youth between the ages of 18 and 21, if the title IV-E agency determines that the youth has a mental or physical disability that warrants the continuation of assistance. The agency may continue the payment whether or not the title IV-E agency provides extended assistance to adopted youth age 18 or older per section 475(8)(B) of the Act, the adoption assistance agreement was entered into after the youth attains age 16, or the youth meets the employment and education conditions of such extended assistance. The agency may provide continued payments to such a youth with a disability by amending the adoption assistance agreement at any time prior to attaining age 18.

Extended adoption assistance to youth age 18 or older. A title IV-E agency that provides extended adoption assistance under the option (to youth for whom the agency entered into an initial adoption agreement after the youth attained age 16) must terminate payments when the youth attains an older age as elected by the agency per section 473(a)(4)(A)(i)(I) of the Act. However, a title IV-E agency may provide a payment up to age 21 for any child that has a disability which warrants continued assistance as described above whether or not the agency takes the option.

Application of current policy and regulations. To the extent not superseded by the law, existing regulations and policy for the title IV-E adoption assistance program apply equally to both a child who is an applicable child and one who is not an applicable child. In particular, a title IV-E agency must provide adoption assistance to any eligible child; may not target the adoption assistance to a subset of eligible children; and may not terminate adoption assistance for reasons other than those

provided in law. Please see CWPM Section 8.2 for further clarifications.

Reinvestment of Adoption Savings

A title IV-E agency must spend any savings generated from implementing the revised adoption assistance eligibility criteria on child welfare services provided under titles IV-B and IV-E (section 473(a)(8) of the Act). The agency must provide a certification that this requirement is being met in the title IV-E plan (see ACYF-CB-PI-09-08). A title IV-E agency has the flexibility to determine the methodology for calculating savings and is not required to provide a specific accounting of funds to ACF. At this time, we are not issuing further policy in relation to the provision.

Adoption Tax Credit

A title IV-E agency must have a mechanism in place to inform prospective adoptive parents of children in foster care of the Federal adoption tax credit under section 23 of the Internal Revenue Code of 1986 (26 U.S.C. 23) (section 471(a)(33) of the Act). The adoption tax credit is a tax credit for qualifying expenses paid to adopt an eligible child (including a child with special needs). Qualifying expenses may include reasonable and necessary adoption fees, court costs, attorney fees, traveling expenses (including amounts spent for meals and lodging while away from home), and other expenses directly related to and for which the principal purpose is the legal adoption of an eligible child.

The title IV-E agency has the flexibility to determine how it will inform prospective adoptive parents of a child in foster care of the tax credit. For example, an agency may develop fliers or letters in which to inform prospective adoptive parents. However, it may be prudent for the agency to notify prospective adoptive parents to consult a tax professional when determining their eligibility for the tax credit. Information about the adoption tax credit, eligibility, and the forms needed for filing are also available on the Internal Revenue Service's (IRS) website (http://www.irs.gov/).

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Section K: Indian Tribes and Title IV-E

We are pleased that at least one Tribe has submitted a title IV-E plan for review and that several Indian Tribes have received the first development grants that put them on a path towards submitting a title IV-E plan within two years of the grant award. As we learn from these initial grantees about their experiences and information needs in developing a title IV-E plan, we anticipate providing additional guidance that can assist any Indian Tribe that is interested in operating a title IV-E program directly and/or a title IV-E agreement with a State.

Title IV-E Plans

As indicated in prior guidance, Federally-recognized Indian Tribes, Tribal organizations and Tribal consortia may submit a title IV-E plan to us at any time (ACYF-CB-PI-09-08 and ACYF-CB-IM-08-03). To prepare for the submittal of a Tribal title IV-E plan, each year there will be an opportunity for additional Indian Tribes to apply for the one-time grants to develop a title IV-E program. Title IV-E program development grants may be used by the Indian Tribe for any costs attributable to meeting the requirements for approval of a Tribally-operated title IV-E plan, including: development of a data collection system; development of a cost allocation methodology; and, establishing Tribal agency and court procedures necessary to meet the case review requirements in the law (section 476(c)(2)(A)(iii) of the Act). Announcements of the development grant opportunity will be made via www.grants.gov.

Indian Tribes do not need to apply for or receive a development grant in order to submit a title IV-E plan to CB. Indian Tribes may solicit the assistance of CB RO staff and our technical assistance partners to understand the plan requirements of titles IV-B and IV-E, obtain insight into how to develop and operate a title IV-E plan and program, and/or to develop title IV-E agreements with States.

Title IV-E Agreements and Negotiating State and Tribal Agreements in Good Faith

A title IV-E agency is required to negotiate in good faith with any Indian Tribe, Tribal organization or Tribal consortium in the State that requests to develop an agreement with the State title IV-E agency to administer a title IV-E program on behalf of Indian children who are under the authority of the Tribe, Tribal organization, or Tribal consortium (section 471(a)(32) of the Act). We encourage States and Indian Tribes to work together to enter into or revise existing title IV-E agreements or

contracts as needed to ensure that Indian children have the same access to the title IV-E program as any other child. This may include offering technical assistance on the State's title IV-E program, such as the title IV-A State plan as in effect on July 16, 1996, proper documentation of claims, or other areas.

While CB has not specifically defined what constitutes negotiating "in good faith," at a minimum this provision ensures that all parties have an opportunity to contribute to the development of title IV-E agreements. If a State presents a Tribe with a title IV-E agreement without providing the Indian Tribe an opportunity for input or otherwise proposes revisions to the title IV-E agreement, it is not consistent with the provision. States and Indian Tribes have discretion to craft arrangements that work best for the parties to a title IV-E agreement or contract (see CWPM Sections 8.1G and 9.4). Again, we are ready to provide assistance to States and Indian Tribes interested in the development or renegotiation of these arrangements through CB RO staff and our technical assistance partners. For example, this may include Tribes communicating through the CB sponsored Tribal listserv and providing peer-to-peer assistance among Tribes that have instituted a title IV-E program and plan or entered into a title IV-E agreement.

Interim Final Rule

An interim final rule is forthcoming, as required by P.L. 110-351, section 301(e). This interim final rule will carry out the amendments made to title IV-E of the Act to authorize Indian Tribes to directly-operate title IV-E programs. The law specifically requires that we develop and codify procedures in an interim final rule to ensure that a transfer of responsibility for the placement and care of a child under a State title IV-E plan to a Tribal title IV-E plan or to an Indian Tribe with an agreement or contract under title IV-E does not affect the child's eligibility for title IV-E or title XIX Medicaid. Further, the law requires that we address in interim rules the types and amounts of in-kind expenditures that Indian Tribes may claim under a title IV-E plan. We anticipate that the interim final rule will address some of the questions and comments that we have heard from Indian Tribes during consultation sessions. However, Indian Tribes may submit a title IV-E plan at any time regardless of when these rules are published.

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Section L: Short-Term Training

As we have described in previous guidance, under section 474(a)(3)(B) of the Act, a title IV-E agency may claim for the short-term training of certain categories of trainees including: current or prospective foster or adoptive parents and the members of the staff of licensed or approved child care institutions providing care to foster and adopted children receiving assistance under title IV-E, in ways that increase the ability of current or prospective parents, staff members, and institutions to provide support and assistance to foster and adopted children at a Federal Financial Participation (FFP) rate of 75 percent. Under P.L. 110-351, a title IV-E agency may now also claim the cost of short-term training for additional categories of trainees including: relative guardians (if the title IV-E agency has opted to offer a title IV-E guardianship assistance program), members of licensed or approved child welfare agencies providing services to children receiving assistance under title IV-E, members of the staff of abuse and neglect courts, agency attorneys, attorneys representing children or parents, guardians ad litem, or other court-appointed special advocates representing children in the proceedings of such courts in ways that increase their ability to provide support and assistance to title IV-E eligible children (see CWPM 8.1 H, Q/A #1). The FFP rate for these additional categories is phased in as follows: 60 percent in FY2010, 65 percent in FY2011, 70 percent in FY2012 and 75 percent in FY2013 and forward. A title IV-E agency may determine the best way to deliver training, which may include collaborating with these groups to determine whether joint training best meets the needs of these groups and the title IV-E agency.

All existing regulations in 45 CFR 1356.60(b) and (c) apply to a title IV-E agency claiming for the additional categories of trainees. A title IV-E agency has discretion to determine which child welfare agencies are considered licensed or approved for the purpose of this provision. Consistent with existing policy, a wide range of topics for short-term training are allowable as long as the training is closely related to one of the examples cited in 45 CFR 1356.60(c)(1) and (2) as allowable administrative activities under the title IV-E program (see CWPM 8.1H, Q/A #8). Some of these topics that may be relevant to the P.L. 110-351 amendments include: independent living and the issues confronting adolescents preparing for independent living consistent with section 477(b)(3)(D) of the Act; contract negotiation, monitoring or voucher processing related to the title IV-E program;

effects of separation, grief and loss, child and adolescent development (including pregnancy prevention, healthy relations, and sexual health), visitation, trauma, and exposure to violence; negotiation and review of adoption assistance agreements; permanency planning, including using kinship care as a resource for children involved with the child welfare system; and social work practice, such as family-centered practice, cultural competency (including issues for LGBTQ youth), and social work methods including assessments.

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Section M: Funding and Administrative Costs

Where allowable, a title IV-E agency may claim the cost of implementing these provisions (with the exception of section 422(b)(15) of the Act, the Health Care Oversight and Coordination Plan) as title IV-E administrative costs under sections 474 and 472(i) of the Act. Any such costs claimed must be pursuant to a public assistance cost allocation plan (PACAP), a pending PACAP in some situations (45 CFR 95.515), or a Tribal plan identifying the indirect costs and other administrative costs that will be allocated and claimed under the title IV-E program, as applicable. A title IV-E agency may need to amend an existing cost allocation plan to claim these costs. Please refer to CWPM section 8.1 for further guidance on what administrative costs may be claimed. The following list provides examples of some types of administrative costs related to these provisions that may be claimed:

- A title IV-E agency that implements the option to provide title IV-E payments to youth age 18 or older may claim the allowable administrative and training costs per the statute at 474(a)(3) of the Act and regulations at 45 CFR 1356.60(c). (See sections A and B above.)

- A title IV-E agency may claim allowable administrative costs associated with transition planning as it is part of the youth's case plan per section 471(a)(16) of the Act. (CWPM 8.1B Q/A #17). (See section C above.)

- A title IV-E agency may claim as an allowable administrative cost the cost of transporting siblings removed from their home and not jointly placed (regardless of whether these siblings are in foster care, guardianship or adopted) to sibling visits and can also claim incidental costs associated with such visits, such as the costs of the siblings' meals during such visits. (See section G above.)

- A title IV-E agency may claim allowable administrative costs associated with improving existing agency protocols for locating and notifying relatives of children entering title IV-E foster care. (See section H above.)

- States and Tribes with an approved title IV-E plan may claim allowable administrative costs associated with the good faith negotiation of title IV-E agreements. (See section I above.)

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Section N: Instructions for Amending the Title IV-E Plan

By December 31, 2010, each title IV-E agency must submit to ACF sections 2 and 3, and if applicable, sections 4 and 6 of the title IV-E pre-print and applicable certifications (as listed below) to amend its title IV-E plan. The title IV-E agency is required to submit sections 2 and 3 of the pre-print, even if the title IV-E agency is not electing the option to change the definition of "child" because the submitted amendments must clearly reflect the title IV-E agency's definition of "child" and otherwise conform to the statutory changes made by P.L. 110-351 and P.L. 111-148, effective October 1, 2010. In addition, if the title IV-E agency wants to extend assistance beyond age 18 but select a definition of "child" lower than age 21 (i.e., age 19 or 20), the title IV-E agency must sign and submit the corresponding certification in Attachment VI with the title IV-E plan amendment to the RO. In completing the pre-print, the title IV-E agency must clearly record the applicable statutory, regulatory or policy references and citations for the affected Federal requirements. Alternatively, the title IV-E agency may submit the same information as described here in its own format. The title IV-E agency must submit the completed sections (by December 31, 2010) to the appropriate CB Regional Program Manager for approval as follows (see Enclosure). The agency may revise its definition of "child" at any subsequent time.

- Section 2 – Foster Care Maintenance Payments Program: Case Plan and Definition of Child
- Section 3 – Adoption Assistance Program: Payments – Amount and Conditions; and, Definition

of Child
- Section 4 – General Program Requirements: Standards of Foster Family Homes and Child Care Institutions (required only for a title IV-E agency that selects a definition of child age 18 or older)
- Section 6 – Guardianship Assistance Program Option: Payments; and, Definition of Child (required only for a title IV-E agency with a GAP plan)
- Attachment I – Certification signed by the official submitting the plan
- Attachment II – Governor/Tribal Leader's Certification
- Attachment VI – Section 475(8) State/Tribal Certification (required only for a title IV-E agency that selects a definition of child of age 19 or 20)

Only the revised sections of the pre-print are attached and the new requirements/modified language are indicated as bolded text. The title IV-E agency must submit copies of referenced material to document compliance for any cited statute, regulation, policy and procedure that purports to implement section 475(8) of the Act. The title IV-E agency must submit the plan amendment electronically or on a compact disk. Where the agency is unable to submit electronic signatures for purposes of certification, it may submit the appropriate pages with original signatures.

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Inquiries: Children's Bureau Regional Program Managers

/s/

Bryan Samuels
Commissioner

Attachments

A – Title IV-E Preprint Amendments (PDF - 120 KB)
B – Single Resource on Fostering Connections, updated 7/9/10 (PDF - 154 KB)
C – CB Regional Office Program Managers (PDF - 17 KB)

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[1] The Patient Protection and Affordable Care Act (P.L. 111-148) extends Medicaid eligibility for certain former foster youth up to the age of 26. However, these provision go into effect beginning in 2014. We will work with our CMS counterparts to provide agencies with additional information on these provisions. Back