

+-----+
 | ADMINISTRATIVE DIRECTIVE |
 +-----+

TRANSMITTAL: 93 ADM-34

TO: Commissioners of
 Social Services

DIVISION: Services &
 Community
 Development

DATE: October 28, 1993

SUBJECT: Foster Care and Adoption Assistance: Eligibility Under Title
 IV-E, Emergency Assistance for Families (EAF), and the
 Supplemental Security Income Program (SSI)

 SUGGESTED

DISTRIBUTION: Child Welfare Executives and Staff
 Public Assistance Staff
 Medical Assistance Staff
 Accounting Supervisors
 Staff Development Coordinators

CONTACT
 PERSON:

Title IV-E: Veronica Lynch (89A594): 1-800-342-3715,
 ext. 4-9452; Systems: Gerald Seeley (OFL130): 1-800-
 342-3727. Medicaid: Ann Hughes:(AV0400) 1-800-342-3715
 ext. 4-9130; Claiming (Local Financial Operations):
 Upstate Office: Roland Levie (AX2060): 1-800-342-
 3715, ext. 4-7549; Metro Office: Marvin Gold
 (OFM270): (212) 383-1733

ATTACHMENTS:

None

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref. Fiscal Ref.	Misc. Ref.
75 ADM-85		Part 360		Man., Vol.	IM Source
81 ADM-10	84 ADM-4	Part 369,	Title IV-E	II, Ch. 3	Book-VIII-U
81 ADM-55		Part 372,	of SSA; SSL	Bulletins	Adoption
84 ADM-4		Part 421,	101,101-a,	134, 143b,	Services
86 ADM-32		426, 428,	358-a,384-a	Bull. 198	Program
87 ADM-22		and 430	384-b,392,		Manual
88 ADM-16			409-a,f,		91 LCM-225
93 ADM-6			450-458		92 LCM-110 92 LCM-124

I. PURPOSE

The purpose of this directive is to advise social service districts of the ongoing requirements of Title IV-E of the Social Security Act (SSA), including new federal policy interpretations and audit results. Districts were previously advised in 84 ADM-4 concerning these requirements. However, since the issuance of 84 ADM-4, the U.S. Department of Health and Human Services (DHHS) has conducted audits of the Title IV-E foster care program, and raised eligibility issues, which, while being challenged by this Department, must nevertheless be recognized and addressed.

This directive should assist social services districts in properly determining IV-E eligibility; Emergency Assistance to Families (EAF) and utilizing Supplemental Security Income (SSI) for children in foster care. The appropriate claiming of these federal programs should aid social services districts to remain under the present State Foster Care Cap. (See 92 LCM-110).

II. BACKGROUND

The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) was enacted on June 17, 1980. This legislation established the new Title IV-E of the SSA, which provides for federal reimbursement to the States for Foster Care and Adoption Assistance (FCAA). In addition, P.L. 96-272 amended Title IV-B of the SSA in relation to the funding of child welfare services.

Under the Title IV-E program, fifty percent federal reimbursement is available for care and maintenance, related administrative costs of the foster care program, and also for adoption assistance subsidies.

Title IV-E provides foster care reimbursement to States for children who would have been eligible for the Aid to Dependent Children Program under a State's approved Title IV-A plan, and Adoption Assistance for special needs children being adopted who are eligible for Title IV-E Adoption Assistance through either Aid to Dependent Children (ADC) or the Supplemental Security Income (SSI) programs.

New York State became a Title IV-E state effective April 1, 1982. The purpose and funding for the Title IV-E program has remained essentially the same over the past ten years since New York implemented the Title IV-E (FCAA) program. However, as HHS has conducted IV-E audits throughout the States, including New York, there have been changing policy interpretations provided by HHS which differ with the State's initial interpretation of the Title IV-E program.

Although this Department is challenging several of these interpretations at this time, in order to protect the State's IV-E foster care and adoption assistance claims, this directive will inform districts of the current federal eligibility policies and interpretations.

III. ORGANIZATION AND CONTENTS OF THIS ADMINISTRATIVE DIRECTIVE

The program and policy changes presented in this directive cover a variety of categorical, financial, and programmatic factors in the areas of foster care, adoption assistance, and medical assistance.

To facilitate use of this administrative directive, the following index should guide users to the appropriate sections.

PAGETABLE OF CONTENTS

IV.	<u>PROGRAM IMPLICATIONS</u>	6
	A. <u>Foster Care</u>	6
	1. Definitions	6
	2. Categorical/Financial Eligibility	7
	a. Age	8
	b. Categorical Relationship	8
	c. Income and Resources	9
	d. Living with a Specified Relative	9
	e. Responsibility for Care/Placement	10
	f. Documentation	10
	3. Periodic Redetermination	10
	a. Categorical Redetermination	11
	b. Financial Redetermination	12
	c. Documentation	13
	d. Title IV-E Redetermination v. Initial Determination (Discharge)	14
	4. Programmatic Eligibility	14
	a. Federal Requirements for Reimbursement	15
	5. Placement	18
	a. Court Placements	18
	b. Voluntary Placements	21
	c. Placements Resulting from Emergencies	22
	d. Court Redeterminations	23
	6. Authorization	24
	7. Medical Assistance	24
	8. Allocation of Administrative Costs	25
	9. Title IV-E/Title IV-D Relationship	26
	10. Supplemental Security Income (SSI)	26
	B. <u>Adoption Assistance</u>	27
	1. Definitions	27
	2. Categorical/Financial Eligibility	33
	a. Categorical Relationship	33
	b. Financial Eligibility	33
	c. Documentation	34
	3. Programmatic Eligibility	34
	a. "With Special Needs"	34
	b. Adoption Assistance Agreement	34
	c. Non-Recurring Adoption Expenses	35
	d. Relation of State Requirements to the Federal Requirements	35
	4. Annual Review	37
	5. Authorization	38
	6. Medical Assistance	38
	7. Allocation of Administrative Costs	39

	<u>PAGE</u>
V. <u>REQUIRED ACTION</u>	40
A. <u>Foster Care</u>	40
1. Eligibility Process	40
2. Processing of Division for Youth Cases	41
3. Redeterminations	41
4. Authorization	43
5. Medical Assistance	43
6. Systems Implications	43
B. <u>Adoption Assistance</u>	45
1. Eligibility Process	45
2. Medical Assistance	47
3. Systems Implications	48
VI. <u>EFFECTIVE DATE</u>	50

IV. PROGRAM IMPLICATIONS

A. Foster Care

1. Definitions

- a. Foster Care and Adoption Assistance (FCAA) - The State's program implementing P.L. 96-272, Title IV-E of the SSA and relates only to those children eligible for or in receipt of foster care or adoption assistance which is subject to Federal reimbursement.
- b. Non - Voluntary (Court Ordered) Placements - Those placements of children which are ordered by a court of competent jurisdiction through Articles 3, 7, or 10 of the Family Court Act (FCA), or Section 358-a of the Social Services Law (SSL).
- c. Voluntary Placement - An out-of-home placement of a child under 18 years of age, by or with the participation of the local social services district, after the parents or guardians of the minor have requested the assistance of the district and have signed a voluntary placement agreement pursuant to Section 384-a of the SSL. Federal reimbursement for voluntary placements is time limited and may not exceed 180 days, unless there has been a judicial determination within the first 180 days of placement approving the placement.
- d. Foster Care Maintenance Payments - Payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence. Also, Title IV-E foster care payments may include the needs of a Title IV-E eligible foster child who is also a minor parent and her child when they reside together in a family foster home or residential facility.
- e. Family or Child Counseling/Treatment (Code 08) - Those direct client interactive services which are carried out during individual counseling sessions with the child, family or foster family to ameliorate or remedy personal problems, behavior or home conditions.

- f. Foster Care Children (Eligibility-Code 98) - Determining and Redetermining Eligibility. Those activities related to the initial determination of eligibility and the periodic review of continuing categorical eligibility including activities such as: client and collateral interviews, collection of documentation, completion of necessary forms to establish a case record (manual and automated), making a final disposition, the authorization of both basic and special needs for eligibility cases and the maintenance of the eligibility case record.
 - g. Foster Care Children (Management -Code 88) - Case Management. Those activities related to the overseeing of all aspects of a case to assure that: eligibility and authorization functions are accomplished on a timely basis; procedural safeguards are in place and accomplished to assure protection of the rights of the parents and child, care, maintenance, and services are appropriate to the child's needs; voluntary agreements and appropriate judicial proceedings are timely, the UCR (initial assessment and updated plan) is completed and data in WMS/CCRS is accurate.
 - h. Foster Care Training-Covers time staff is engaged in or preparing for training, either as a trainer of other services staff, or as a trainee regarding program policy, or procedural matters, or of casework practices. This category does not include training provided to prospective foster/adoption home/families.
2. Initial Categorical/Financial Eligibility-Although as of April 1, 1982, the foster care maintenance program is no longer administered under Title IV-A (AFDC), the basic categorical and financial eligibility factors remain unchanged under the Title IV-E program. The foster care child's relatedness to the Aid to Dependent Children (ADC) program must be determined in accordance with relevant sections of Department regulation, 18 NYCRR 426.3(e) as follows:
- (e) Receipt of Aid to Families with Dependent Children (ADC)
 - (1) The child shall have been in receipt of ADC in or for the month in which either the voluntary agreement was entered into, or court proceedings leading to the removal from the home were initiated, or

(2) The child would have received ADC if an application had been made for such benefits in or for the month in which either a voluntary agreement was entered into or such court proceedings leading to the judicial determination that resulted in the removal from the home were initiated, or

(3) The child had been living with a relative specified in 18NYCRR 369.1 within six months prior to the month in which either a voluntary agreement was entered into or court proceedings were initiated, and would have received aid in or for such month if in such month he had been living with such relative and application for such benefits had been made.

NOTE: If a child is found to be ineligible for ADC at the time of the initial determination, IV-E foster care eligibility cannot be derived at any point in the future for that particular placement.

However, if a case was mistakenly found ineligible for IV-E or was coded improperly so that IV-E reimbursement was not claimed, IV-E claims can be submitted retroactive for twenty-two months. The reason for the retroactive claiming must be clearly documented in the case record.

The following are Title IV-E Foster Care eligibility requirements:

a. Age

A child must be under 18 years of age or under age 19 and is a full-time student in a secondary school program, or in the equivalent level of vocational or technical training, and is expected to complete the program before reaching age 19.

b. Categorical Relationship/Parental Deprivation

An applicant for or a recipient of Title IV-E Foster Care must meet the same categorical requirements as those mandated under the Title IV-A (AFDC) program. See Department regulation, 18 NYCRR Sections 369.1(b), 369.2(a), 369.2(c), and 369.2(g).

The child must meet the ADC requirement of parental deprivation (based on the natural or adoptive parents). That is, the child shall be considered to be deprived of

parental support or care by reason of the death, continued absence from the home, physical or mental incapacity of a parent, or unemployment of the parent who is the principal wage earner, when any one of these deprivation factors is a contributing factor in the child's need for a grant of ADC (See Department regulation 18NYCRR 369.2(g) for the definition of parental support or care).

c. Income and Resources

In determining initial eligibility for Title IV-E Foster Care, the income and resources of the child's family must be evaluated for ADC eligibility. The income and resources allowed shall be computed according to the public assistance standards contained in Department regulations, 18 NYCRR Part 352.

NOTE: If the child is removed from a specified relative's home, other than the parent(s) (i.e., a non-legally responsible relative), the income and resources of this relative will not be considered in determining the ADC eligibility of the child. (18NYCRR 369.2)

d. Living with a Specified Relative

The child must have lived in the home of a specified relative (see 18 NYCRR 369.1(b)) at some time within the six months prior to the initiation of court proceedings or when a voluntary placement agreement was signed. There must be documentation in the case needed to document "specified relative", i.e., such as case narrative, IM records, probation reports, etc.

Specified relative includes any relation by blood, marriage or adoption who is within the fifth degree of kinship to the dependent child. (See GIS 92 IM DCO-11).

NOTE: When the child is placed with a kinship foster parent, that relative cannot also be considered to be the specified relative as described in the above paragraph.

NOTE: The child born to a mother who was a hospital patient or prison inmate would be considered to be living with the mother at the time of birth, and if placed in foster care would be removed from the home of the relative (the mother). The definition of "home" is applicable to the hospital or prison setting.

e. Responsibility for Care and Placement

The child shall have been removed from the home of a parent or other specified relative as a result of a judicial determination by a court of competent jurisdiction, to the effect that continuation therein would be contrary to the welfare of the child, and that where appropriate, reasonable efforts were made prior to removal, to prevent or eliminate the need for removal of the child from his home or, if the child has been in foster care, reasonable efforts were made to make it possible for the child to return home.

or

The child was placed into foster care in accordance with a voluntary placement agreement signed by parents/parent or guardians and the local district. Federal reimbursement is available only for first 180 days of placement unless the voluntary placement is approved by the court before the 180 day period lapses.

f. Documentation

Considered acceptable documentation of receipt of ADC would be: WMS printouts, IM letters to the parent(s) home reducing ADC grants due to the child's removal from the ABEL budget.

All eligibility factors for ADC must be met in determining Title IV-E Foster Care eligibility. However, wage stubs, rent receipts, etc. are not required as would be the case in an actual ADC application for a cash grant. For those cases that would have been ADC eligible had they applied, the case record must contain statements concerning the parental deprivation factor, and of the amount of available parental income and resources (unless removed from a non-legally responsible relative home), so that an ABEL budget can be done documenting that ADC standards of need were met. Attempts by districts to verify income should be documented in the case record.

3. Periodic Redetermination

Title IV-E Foster Care cases must be re-evaluated for continuing eligibility not less frequently than every six months. In redetermining eligibility, three distinct

components must be reviewed and documented: 1) programmatic, 2) categorical, and 3) financial eligibility (See 18 NYCRR 426.4). Programmatic redetermination of eligibility is addressed in Section 4. (page 14) and relates to the requirements of a periodic review of continuing services need.

a. Categorical Redetermination

Once initial eligibility has been determined, only one categorical factor must be reviewed each six months, namely the continuation of parental deprivation. Departmental regulation 18NYCRR 369.2(g) details the requirements to be followed in redetermining continuing deprivation each six months. The deprivation factor for continued ADC eligibility must be measured in relation to the home from which the child was removed. Deprivation based on the death of one or both parents, of course, becomes a constant as opposed to other forms of deprivation which are subject to change and require redetermination each six months. Also, while a court order for termination of parental rights cannot be used in establishing initial eligibility, the existence of such an order may be used to verify permanent deprivation of the child for continued Title IV-E eligibility.

With respect to reviewing the home situation from which the child was removed, the following three examples should clarify this concept.

- (1) Example: A Title IV-E foster child removed from the home of his or her parents would continue to be eligible as long as deprivation of parental support by virtue of absence, death, physical or mental incapacity, or unemployment continues to exist. If it is determined that deprivation no longer exists in the parent's home, the child will no longer be eligible for Title IV-E reimbursement, unless a deprivation factor reoccurs.
- (2) Example: If a child was removed from the home of a relative such as an aunt, it is the aunt's home which is reviewed at the time of redetermination to establish whether or not deprivation continues to exist. Since deprivation is based on the status of the parents, deprivation would continue if both parents were not residing in the household of the aunt.

- (3) Example: Title IV-E Foster Care eligibility for a child was initially based on an absent father. At redetermination, it is learned that the father has returned to the home. If deprivation was based solely on the father's absence, unless another deprivation factor can be established, such as the incapacity of either parent, IV-E eligibility ceases.

NOTE: Although the Title IV-E case may be rendered ineligible if a parental deprivation factor no longer exists, the case may regain Title IV-E claiming status if in the future a parental deprivation factor occurs again in the home from which the child was removed. Also, the deprivation factor which reoccurs does not have to be the original factor which established Title IV-E eligibility.

- b. Financial Redetermination-Once initial eligibility has been determined, the parents and the foster child are treated as two distinct cases in completing the financial redetermination. That is, increased earnings or resources of the ADC household do not impact on the Title IV-E child's status, (excepting income made available to support the child in foster care). Conversely, increased income or resources available to the child do not affect the ADC household.

However, increased earnings may indicate that a parent, if the principal wage earner, no longer meets the definition of unemployed (or under-employed) for ADC-U eligibility. If this is the case, then there may no longer be a parental deprivation factor, as required for continuing Title IV-E eligibility.

- (1) Unearned Income - Unearned income of a child (child support, OASDI, VA, etc.) must be applied against the foster care need standard which includes all foster care maintenance costs, administrative costs, and special expenses. If unearned income exceeds 185% of the foster care need standard, then a change in claiming status from Title IV-E federal participating (FP) to federal non-participating (FNP) must be made.

NOTE: Once a child is in foster care, the foster care need standard and the payment standard (i.e., the actual cost of foster care) become one and the same.

- (2) Earned Income - Earned income of a part-time or full-time student who is not employed full-time should be disregarded in a Title IV-E foster care redetermination.

Earned income of any foster child who is not a student (or who is employed full-time) must be applied against the foster care need standard. All earned income disregards should be applied before available income is measured against the foster care need standard. In addition to Bulletin 134, reference to Department regulation 18NYCRR 352.20 should be made in determining the application of earned income. For instructions on how to budget earned income, see 90 ADM-3.

- (3) Resources - If a foster child's resources exceed the ADC limit of \$1000, then the child is not eligible for IV-E Foster Care unless his or her resource level subsequently falls below \$1000. The child could then be re-opened as a IV-E Foster Care case. (See Retention of Earnings in Departmental regulation 18NYCRR 431.4).

c. Documentation

The case factors which must be documented for Title IV-E Foster Care redetermination are: age, income, resources, parental deprivation, judicial determination, and foster care placement (See Redeterminations, p. 41).

Documentation of all redetermination factors must be contained in each child's case record.

Parental deprivation must be reviewed and documented in the case record: Examples: if the child is from an ADC household, case reference to the open ADC case number would document ongoing deprivation; a documentation of receipt of SSI or Social Security benefits based on disability or blindness of a parent is proof of incapacity.

Also, the Uniform Case Record (UCR) updates should contain family information which would document the parent(s) circumstances and location.

d. Title IV-E Redetermination versus New IV-E Determination When Children Are Discharged and Return to Foster Care

There are some case situations where children are on trial discharge or final discharge, and then return to foster care. Some readmissions to foster care will require a new Title IV-E determination, others will require a IV-E redetermination.

- (1) Example: If a Title IV-E child is placed into a DMH residential care facility which is not eligible to receive Title IV-E foster care payments, and then returns to a foster home or facility eligible for Title IV-E payments, a redetermination of Title IV-E eligibility would be appropriate at the time the child returns to the Title IV-E Foster Care eligible setting.
- (2) Example: A child is no longer in the commissioner's custody, is discharged from foster care and returns home (for what is considered a final discharge). He or she is later returned to foster care on a new court order or voluntary placement agreement, an initial Title IV-E eligibility determination must be done, based on circumstances at the time of the return to foster care.
- (3) Example: If the child is returned to his or her home on a trial discharge and remains in foster care status (i.e., still in the commissioner's custody), a Title IV-E redetermination would be done if the child returns to foster care.

4. Programmatic Eligibility

Consistent with P.L. 96-272 and New York's Child Welfare Reform Act of 1979, the Department is firmly committed to preserving a child's place within his/her family, and it is only as a last alternative that a child may be placed in foster care.

Prior to a child's placement in foster care, certain casework activities must take place and the necessity of such placement must be documented. Attempts to avoid foster care placement through the provision of preventive services, or efforts to place children with relatives without a transfer of custody to the social services district, must first be made and documented in the Uniform Case Record.

The utilization of the Uniform Case Record in either Department regulation 18NYCRR Part 428 is intended to ensure that these criteria are complied with throughout New York State. It further ensures that once a child does enter foster care, all requirements designed to guarantee appropriate care and services, and to facilitate either the child's return home or a permanent placement, are met.

a. Federal Requirements for Reimbursement

Through the requirements and safeguards of the Uniform Case Record, New York State complies with the programmatic eligibility criteria for Title IV-E Foster Care as outlined in Section 471 of the Social Security Act. There are three major federal program components which are met through the use of the Uniform Case Record:

- (1) Efforts to Prevent Placement
- (2) Case Plan
- (3) Case Review System/Redetermination of Programmatic Eligibility.

(1) Efforts to Prevent Placements and Return Children Home

Section 471(a)(15) of the SSA provides that effective October 1, 1983 each State must have a Title IV-E State Plan which provides that reasonable efforts will be made in each case "... (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home...".

Section 472(a)(1) of the SSA provides in part that each State with an approved Title IV-E Plan must make foster care maintenance payments with respect to a child whose removal from his or her home was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of the child and that reasonable efforts described in Section 471(a)(15) of the SSA had been made.

As a result of Title IV-E audits conducted by the DHHS, some foster care cases in New York (as well as in other States) have been determined to be ineligible by DHHS for Title IV-E foster care due to the lack of explicit language in the court orders placing children in foster care. Federal policy has required that the courts consider and expressly state in the orders:

- (a) Whether continuation of a child in the home would be contrary to the welfare of the child (this wording must be contained in the initial order leading to the child's removal from the home, e.g., the remand);
- (b) Whether reasonable efforts were made, where appropriate, to prevent the placement of a child into foster care or to make it possible for a child in foster care to return home, or that the lack of such efforts was appropriate under the circumstances; and
- (c) In the case of a foster child age sixteen or older, the services needed, if any, to assist the child to make the transition from foster care to independent living.

Chapter 198 of the Laws of 1991 amended Articles 3,7 and 10 of the Family Court Act and 358-a and 392 of the Social Services Law (SSL) to include the requirement for the above wording.

91 LCM-225 informed social services districts of these amendments, and included the prescribed forms for use by the Family Courts.

NOTE: Districts are strongly advised to work closely with DSS attorneys and Family Court judges and staff to ensure that the court orders contain the required wording.

(2) Case Plan

Section 409-e of the SSL, as well as Section 471(16) of the SSA requires the development of a case plan for every child. A case plan is defined in Section

475(1) of the SSA as "a written document which includes at least the following: A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with Section 472(a)(1) of the SSA; and a plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan."

(3) Case Review System

Section 409-e of the SSL and Section 471(16) of the SSA also requires a case review system for each child. The case review system is defined in Section 475(5) as "a procedure for assuring that:

- (A) each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child;
- (B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review...in order to determine the continuing necessity for and the appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating causes necessitating placement in foster care, and to project a likely date by which the child may be returned home or placed for adoption or legal guardianship; and

- (C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing (Note: See Page 23, Section d. regarding Court Redetermination) to be held in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than eighteen months after the original placement (and periodically thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis; in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents; and
- (D) a child's health and education record is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed at the time of each placement of the child in foster care."

5. Placement

a. Court Placements: Requirements for Federal Reimbursement

(1) Placements Made Pursuant to Articles 3,7 and 10 of the Family Court Act

Pursuant to Articles 3,7 and 10 of the Family Court Act (FCA), judicial determination by a court of competent jurisdiction establishing that placement in foster care is in the best interest of the child

and that reasonable efforts were made, when appropriate, to prevent the placement of the child, is required before federal reimbursement under Title IV-E may be claimed. Once it is determined by the court that such placement is in the best interest of the child, the responsibility for placement and care of such child must reside with the State agency (social service district) administering foster care or with another public agency with which the NYS Department of Social Services has made an agreement (i.e., NYS Division for Youth, and the NYS Office of Mental Health), the NYS Office of Mental Retardation and Developmental Disabilities and the Office of Alcoholism and Substance Abuse).

With respect to Article 3, Article 7, and Article 10 placements, federal reimbursement may begin from the first day of the month in which the court order is issued, assuming that the child has been determined to be ADC related and the placement is in an appropriate certified, licensed, or approved foster care setting.

NOTE: A temporary order (remand) removing a child from the home meets the requirement of a judicial determination, provided that the order specifies that it would be contrary to the welfare of the child for him or her to remain in the home, and that reasonable efforts were made, when appropriate, to prevent placement.

(2) 358-a Placements

Section 358-a of the SSL provides that where a child is voluntarily placed pursuant to Section 384 or 384-a of the SSL and will remain in care for more than thirty days, the placement must become a court ordered placement. This thirty day period was established in the law to permit a period of time for the parents or guardians to evaluate the decision to transfer the care and custody or custody and guardianship of the child to a social services official. In addition, the agency accepting the child has an equal opportunity to evaluate the decision to place the child and if it is determined that the child should remain in care beyond thirty days, a petition must be initiated within thirty days of this determination.

Federal reimbursement is permitted beginning from the first day of the month that a voluntary placement agreement is signed, assuming the ADC relatedness of the child and the placement is in an appropriate foster care setting.

Also, a child who is in care as a result of a transfer of care and custody to the social services official under the provisions of Section 384-a of the SSL may, if ADC relatedness exists and placement is in an approved foster care setting, have the cost of care federally reimbursed from the first day of the month that the court order is issued.

NOTE: A voluntary surrender instrument signed by the parent(s) does not meet the requirements of a voluntary placement agreement (see p.21) thus cannot be claimed under Title IV-E as a voluntary placement.

(3) Timeliness of Court Orders

Federal reimbursement for court-approved foster care placements may be claimed from the first day of the month in which the Court issued an order approving the placement (for children placed through voluntary placement agreements, claiming can begin from day of placement). If the Court delays in issuing such an order after a petition to review the appropriateness of a foster care placement is filed, the ability of the State to claim the maximum amount of federal reimbursement for the cost of the placement could be jeopardized. Because of this, it is essential that in all social services districts, both program and legal staff, work closely with the Family Court in order to ensure that court orders are expeditiously issued. Each social services district must take whatever steps are necessary in order to avoid delay in the issuance of such orders. These steps may include the modification of internal programmatic and legal practices, and may also include a more cooperative working arrangement with the court(s).

b. Voluntary Placements

P.L. 96-272 authorized federal reimbursement for the cost of care for children who have been voluntarily placed in foster care prior to the issuance of a court order. Federal reimbursement is available from the first day of the month that the voluntary placement agreement is signed.

NOTE: It is important to note that for purposes of Title IV-E eligibility, the voluntary placement agreement must be signed only by the parent(s) or guardian(s) of the child. However, Section 384-a of the SSL authorizes the transfer of care by a person with whom a parent has entrusted care of the child. Such a transfer is legal under State Law but is not recognized by federal standards for Title IV-E funding.

(1) Requirements for Federal Reimbursement

In addition to the establishment of a child's eligibility as an ADC related child, a voluntary placement agreement must be signed by either the parent(s) or guardian(s) and the social services district. As defined in Section 472(f) of the SSA, a voluntary placement "means an out-of-home placement of a minor, by or with the participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement;...".

The term voluntary placement agreement "means a written agreement, binding on the parties to the agreement, between the State agency, and other agency acting on its behalf, and the parents or guardians of a minor child, which specifies at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child and the agency while the child is in placement." Provision must also be made for the parent(s) or guardian(s) to request the return of the child. In the event such request is made, the agreement is considered revoked unless the social services district requests and obtains a judicial determination that the return of the child to such home would be contrary to the child's best interest.

(2) Duration of Federal Reimbursement

Federal reimbursement may be claimed for up to 180 days of care, beginning from the date of original placement. If a judicial determination is made within 180 days that continued placement is in the best interests of the child, the child's placement then can be reimbursed under Title IV-E beyond the 180 days. However, it must be remembered that New York State requirements of Section 358-a (i.e., petitioning the court within 30-60 days of placement) must be met. Hence, we anticipate almost all placements in New York State will be non-voluntary (court-ordered) placements.

NOTE: Consecutive voluntary placements may not be used to avoid the judicial process.

c. Placements Resulting from Emergencies (Use of EAF)

When a child is placed in foster care as a result of an emergency, the child may be eligible for Emergency Assistance to Families (EAF).

Any services (e.g., protective, preventive, foster care, etc.) required as a result of the emergency situation which led to the eligibility of the family for EAF are subject to federal reimbursement under EAF as specified in Department regulation 18NYCRR 372.4.

Since all services needed as a result of the emergency can be provided under EAF, the EAF authorization shall not be limited to any specific service and the time period should remain in effect until the emergency is remedied consistent with Economic Security policy.

Social services districts must utilize 18NYCRR Part 372 for direction on policy and procedures covering the application for and the use of EAF for services.

The authorization of services under the EAF program in no way relieves social services districts from complying with the specific program requirements including legal and case management responsibilities such as court orders, case plans (UCR's), foster care home approvals and periodic eligibility redeterminations. Please note that for foster care, Title IV-E remains the program of first choice.

d. Court Redeterminations

(1) Federal Requirements to Receive Reimbursement

P.L. 96-272 provides that a dispositional hearing must be held no later than 18 months after the original placement and periodically thereafter during the continuation of foster care. The federal government has mandated that these initial dispositional hearings be held within the 18 months.

(2) State Requirements

Those children who entered care as the result of an Article 10 proceeding, require extensions of placement under Section 1055 or Section 1055-a of the Family Court Act, which requires that petitions be filed at least 60 days prior to the expiration of the period of placement.

Section 392 of the SSL and Department regulation 18NYCRR 430.1 establish procedures for periodic court reviews of children placed pursuant to Sections 384 and 384-a of the SSL. Chapter 141 of the Laws of 1983 amended Section 392(3) of the SSL (effective 5/23/83) to require that when an authorized agency determines that a child will remain in foster care for a continuous period of 18 months, a petition to review the child's foster care status "...shall be filed in the appropriate family court at least sixty days prior to the end of the month which would constitute the eighteenth month of continuous foster care placement." In addition, Chapter 141 amended Section 392.(5) of the SSL to require that the initial hearing to review a child's foster care status shall take place within 18 months of the date of the original foster care placement.

The foster care status of the child must be reviewed by the Family Court at least every 24 months after the initial 18 month review.

(3) Implication of Federal Requirements to Receive Federal Reimbursement

For extensions of placement under Section 1055 or 1055-a of the FCA, a petition to extend placements must be filed at least 60 days prior to the expiration of the placement order.

Section 392(3)(d) of the SSL provides that a petition to review a child's foster care status is to be filed when the child has been in care for a continuous period of 16 months. In order to receive federal reimbursement, the hearing must be held before the expiration of the 18th month.

All subsequent petitions are to be filed in accordance with the provisions of Section 392.(9) of the Social Services Law.

6. Authorization

The document used for authorizing all aspects of foster care including maintenance, care, and services is the Services Authorization document, the DSS-2970 (see p.38 Authorization).

A duly signed authorization document is required on initial case openings, and on redetermination of continuing financial and programmatic eligibility not less frequently than each six months.

Authorization for Title IV-E claiming can begin from the day of placement providing that the child has met all IV-E eligibility criteria.

7. Medical Assistance

Children in receipt of Title IV-E Foster Care payments are automatically eligible for Medical Assistance (MA) since the eligibility for federal reimbursement is derived from an ADC relationship.

Non-Title IV-E eligible children in foster care (FNP cases) are not automatically eligible for MA and MA eligibility must be established on an individual basis. Separate MA Only applications must be processed for each child. For purposes of the MA eligibility determinations, the child is considered as a household of one. The determination is then made on the basis of income and resources of the child only as outlined in 81 ADM-10. The income and resources, as outlined in 93 ADM-6, must be applied.

COBRA (The Consolidated Omnibus Budget Reconciliation Act of 1985) includes provisions concerning children receiving both Title IV-E Foster Care payments, and adoption subsidies:

Social services districts are not responsible for providing MA for those children on whose behalf a Title IV-E Foster Care maintenance or Adoption Assistance payment is being made, if such children reside outside of New York State. COBRA provides that effective October 1, 1986, the State in which the Title IV-E child resides will be responsible for providing MA, even when the Foster Care and Adoption Assistance payments are made by another state.

Effective October 1, 1986, social services districts must provide medical assistance to Title IV-E eligible children from other states who reside within their districts and on whose behalf the foster or adoptive parents have applied.

This change in the State of residence for purposes of MA affects only Title IV-E Foster Care and Adoption Assistance recipients. For further discussion of the COBRA provisions which concern adoption assistance recipients, see p. 39.

87 ADM-22 covers the 1985 COBRA provisions that relate to MA coverage for Foster Care and Adopted Children.

NOTE: Although Social Security Numbers are no longer required for Title IV-E (since 4/1/85), eligibility for medical assistance requires that each individual have a SSN. If a foster child does not have a SSN, the social services district must file an application with the Social Security Administration on behalf of the child.

8. Allocation of Administrative Costs

Public Law 96-272 allows federal reimbursement for foster care administrative activities/costs associated with Title IV-E eligible children. The SSRR system (Upstate) and Services RMS (NYC) provide service/activity codes that capture the required information for cost allocation and reimbursement purposes. These foster care activities codes are: case related management (Code 88), eligibility determination (Code 98) and foster care services (Code 08). Code 88 and Code 98 activities, when rendered to Title IV-E eligible children, would be the components of your SSRR (RMS) percentage for Title IV-E. Code 88 and Code 98 activities when rendered to Child Welfare cases are reported as Non-IV-E foster care. The SSRR schedule D-2 report would show the Non-IV-E costs as components of your Title XX percentage. However, these activities are excluded from Title XX when the percentages are data entered into the Automated Claiming System and instead are entered as Non-IV-E Foster Care activities. All Code 08 activities are reported as Non-IV-E foster care for reimbursement regardless of the category of cases receiving these activities.

These Non-IV-E foster care costs are reimbursable up to the limit of the local district's Foster Care State share CAP at 50 percent State share and 50 percent local share.

9. Title IV-E/Title IV-D Requirements

Federal statute requires assignment of support rights for Title IV-E Foster Care cases. All Title IV-E Foster Care cases should be referred to the social services district IV-D Unit unless such a referral will adversely affect the health, safety or welfare of the foster child or other persons in the applicant's household, or if such a referral will impair the ability of the child to return home (Department regulation 18NYCRR 426.8(b)). Since there is an assignment in effect for Title IV-E cases, the use of the DSS-2860, the Child Support Enforcement Referral which is used for ADC cases, is appropriate. This form provides an automated referral to IV-D.

10. Supplemental Security Income (SSI) Eligibility for Foster Children

For those children determined to be ineligible for Title IV-E Foster Care, social services districts should screen those children for SSI eligibility. With the decision of the United States Supreme Court in the Zebley case, childhood disability standards have been liberalized so that many more children may now meet disability standards. The SSI benefit level for children in foster care is the "living with others" arrangement. (See 91 LCM-5 and 91 LCM-119)

Also, any children who were eligible for Title IV-E Foster Care but lose IV-E eligibility, should be screened for SSI eligibility.

Some foster children will be eligible for both Title IV-E and the SSI program. However, the current federal policy is that concurrent payment under both programs is not allowable. In these cases, a district must determine under which program reimbursement is most advantageous. Children in foster care receive the SSI Benefit Level of "living with others", which as of January 1, 1993 was \$457 per month. This benefit level is the same for all foster care placements: foster family care, group home care, agency operated boarding homes, or institutional care.

There is no local share in this SSI payment of the current \$457 monthly benefit. If the foster care maintenance costs for an SSI child exceed \$457 monthly, the balance would be shared 50/50 between the state and local district. All administrative costs for an SSI foster child would be 50% state/50% local.

Title IV-E Foster Care reimbursement differs in that it reimburses 50% of the cost of care, regardless of the cost. Title IV-E also reimburses 50% of the administrative costs, clothing costs, and any special items of need, for a Title IV-E eligible child. Therefore, districts should consider the overall Title IV-E reimbursement vs. the SSI standard amount when determining which program would be most cost beneficial for a foster child who would be eligible for either program.

As a rule, whenever a child is in a group foster care program, Title IV-E will provide the greater reimbursement.

B. ADOPTION ASSISTANCE

Federal Title IV-E Adoption Assistance payments are available for children with "special needs" who meet the federal eligibility criteria for the Title IV-A (AFDC), Title IV-E Foster Care, or the Supplemental Security Income (SSI) Program.

Title IV-E adoption assistance payments have been available for eligible children in New York, who were adopted on or after October 1, 1980, and payments were available effective April 1, 1982.

1. Definitions

- a) The federal definition of a child "with special needs", Section 473(c) of the SSA, is as follows:

"(1) the State has determined that the child cannot or should not be returned to the home or his parents; and

(2) the State had first determined (A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such a child cannot be placed with adoptive

parents without providing adoption assistance under this section or medical assistance under Title XIX, and (B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under Title XIX".

New York State definitions (see Section 451 of the Social Services Law and Department Regulation 421.24(a)) are as follows:

- (1) Child - Shall mean a person under the age of 21 years whose guardianship and custody have been committed to a social services official or a voluntary authorized agency prior to such person's 18th birthday or a person under the age of 21 whose guardianship and custody have not been committed to a social services agency if an application for adoption subsidy submitted on behalf of such person is accepted by such official or agency prior to each commitment.
- (2) Handicapped Child - shall mean a child who possesses a specific physical or emotional condition or disability of such severity or kind which, in the opinion of the New York State Department of Social Services, would constitute a significant obstacle to the child's adoption.

This child has been diagnosed as having:

- a medical or dental condition which will require repeated or frequent hospitalization, treatment or follow-up care;
- a physical handicap, by reason of physical defect or deformity, whether congenital or acquired by accident, injury, or disease, which makes or may be expected to make a child totally or partially incapacitated for education or for remunerative occupation, as provided in Sections 1002 and 4001 of the Education Law, or which makes or may be expected to make a child handicapped as provided in Section 2851 of the Public Health Law;

- a substantial disfigurement such as the loss or deformation of facial features, torso, or extremities;
- a diagnosed personality or behavioral problem, psychiatric disorder, serious intellectual incapacity or brain damage which seriously affects the child's ability to relate to his peers and/or authority figures, including mental retardation or developmental disability;

(3) Hard-to-Place Child - A child, other than a handicapped child:

(i) who has not been placed for adoption within six months from the date his or her guardianship and custody were committed to the social services official or the voluntary authorized agency; or

(ii) who has not been placed for adoption within six months from the date a previous adoption placement terminated and the child was returned to the care of the social services official or the voluntary authorized agency; or

(iii) who meets any of the conditions listed in clauses (a) through (f) of this subparagraph, which the New York State Department of Social Services has identified as constituting a significant obstacle to a child's adoption, notwithstanding that the child has been in the guardianship and custody of the social services official or voluntary authorized agency for less than six months:

(a) the child is one of a group of two siblings (including half-siblings) who are free for adoption and it is considered necessary that the group be placed together pursuant to 18 NYCRR Sections 421.2(e) and 421.18(d); and

(1) at least one of the children is five years old or older; or

- (2) at least one of the children is a member of a minority group which is substantially overrepresented in New York State foster care in relation to the percentage of that group to the State's total population; or
 - (3) at least one of the children is otherwise eligible for subsidy in accordance with the provisions of this subdivision:
- (b) the child is the sibling or half-sibling of a child already adopted and it is considered necessary that such children be placed together pursuant to 18 NYCRR Sections 421.2(e) and 421.18(d) of this Part; and
- (1) the child to be adopted is five years old or older; or
 - (2) the child is a member of a minority group which is substantially overrepresented in New York State foster care in relation to the percentage of that group to the State's total population; or
 - (3) the sibling or half-sibling already adopted is eligible for subsidy or would have been eligible for subsidy if application had been made at the time of or prior to the adoption;
- (c) the child is one of a group of three or more siblings (including half-siblings) who are free for adoption and it is considered necessary that the group be placed together pursuant to 18 NYCRR Sections 421.2(e) and 421.18(d); or

- (d) the child is eight years old or older and is a member of a minority group which is substantially overrepresented in New York State foster care in relation to the percentage of that group to the State's total population; or
- (e) the child is 10 years old or older; or
- (f) the child is hard to place with parents other than his/her present foster parents because he/she has been in care with the same foster parents for 18 months or more and has developed a strong attachment to his/her foster parents while in their care such that separation from them would adversely affect the child's development.

NOTE: New York State's own hard-to-place definition for purposes of State funded adoption subsidies is broader than the federal definition, i.e., those children who have been freed for six months or more and have not been placed are considered to be "hard-to-place" children by this State, but do not meet the federal definition.

- b. Adoption Assistance Agreement-Section 475(3) of the SSA defines this agreement as: "a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the amounts of the adoption assistance payments and any additional services and assistance which are to be provided as part of such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective".

Clause B noted in the preceding paragraph is effective for adoption assistance payments entered into after September 30, 1983. However, Section 457 of the SSL requires that adoption subsidy payments be made even if the child and his adoptive parents move from New York State.

- c. Adoption Assistance Payments - Those adoption assistance payments to Title IV-E eligible children under the Title IV-E program which are subject to federal reimbursement.
- d. Adoption Services - (Code 01) - Assisting a child to secure an adoptive home through: counseling with biological parent or legal guardian concerning surrender of, or legal termination of parental rights with regard to a child; counseling for families after placement; supervision of children in adoptive homes until legal adoption; and counseling of adoptive families after legal adoption and also activities for those children qualifying for the state subsidy program.
- e. Adoption Assistance (Code 81) - Those activities directly related or considered necessary for the administration of the Title IV-E Adoption Assistance. Those activities which are considered to be directly related to the administration of these programs are: the evaluation of the child's placement needs; preplacement planning; the recruitment, study and evaluation of interested prospective adoptive parents; the determination of eligibility of the child and the adoptive parents to receive Federal Adoption Assistance; negotiation and review of the adoption agreement with the adoptive parents; post placement management of the payments if requested by the parents; participation in any fair hearing or appeal process and other directly related/administrative activities. In order to carry out efficient and appropriate administration of Title IV-E Adoption Assistance, certain other activities are considered necessary such as development of a case plan, recruitment of adoption home, home studies, placement of a child in an adoptive home, case reviews, case management or supervision occurring during the period between placement and the final adoption decree and referral activities to receive services.

NOTE: For a comprehensive reference of adoption practices, policies and types of subsidies, the Adoption Services Program Manual should be the primary document used.

2. Categorical/Financial Eligibility

a. Categorical Relationship

Title IV-E reimbursement is available as of April 1, 1982, for care and maintenance payments for those children who are adopted with subsidy on or after October 1, 1980, (were still receiving the subsidy as of April 1, 1982), and who are also eligible for either the SSI or ADC program at the time when the adoption petition was filed. Additionally, these children must meet the criteria of a child with "special needs" (see Definitions on page 27). Only if a child meets all the above conditions can Title IV-E Adoption Assistance be available.

SSI or ADC relatedness of the child must be reviewed at the time when the adoption petition is filed. Although a redetermination for Title IV-E Foster Care may have been done within six months prior to the filing of the adoption petition, a specific review for Title IV-E, SSI or AFDC must be completed at this point. Eligibility for either program must be documented in the child's case record. The DSS-3912 "Eligibility for Title IV-E Adoption Assistance" form must be completed (see 88 ADM-16).

It should be noted that eligibility for Title IV-E Adoption Assistance can also be established through a child's eligibility for the SSI program.

b. Financial Eligibility

(1) Income-Adoptive Parent

There is not a means test for the adoptive parent(s) to determine eligibility for Title IV-E Adoption Assistance payments. Department regulation 18NYCRR 421.24 sets forth the procedure for application of income in determining the amount of subsidy to be granted.

In those instances when adoptive parents elect to receive Adoption Assistance payments in an amount less than specified by Department regulation 18NYCRR 421.24(c)(12), an agreement must be signed stating that they voluntarily agree to accept the lesser amount.

(2) Income-Child

At the time the adoption petition is filed, it must be shown that the child is financially needy through their eligibility for either the ADC, Title IV-E Foster Care, or SSI Program.

c. Documentation

In the child's case record (post-finalization record), the child's relatedness to ADC or SSI must be noted. Also, the "Special Needs" of the adopted child which qualify him/her for the Title IV-E Adoption Assistance must be documented.

3. Programmatic Eligibility

Federal Requirements-Federally reimbursable subsidies are available for certain Title IV-E Foster Care, ADC, or SSI eligible children who have been adopted. These children may receive such subsidies if:

- the child has been determined to be a child with "special needs"; and
- adoption assistance payments are made pursuant to an adoption assistance agreement.

a. "With Special Needs"

Section 473(c) of the SSA provides that in order for a child to be considered a child "with special needs", they must meet certain requirements (see definition of "special needs" on page 27).

b. Adoption Assistance Agreement

An adoption subsidy agreement is required in each case in order to receive federal reimbursement (see definition on page 31).

It is also required that the amount of the Adoption Assistance payment is to be determined through the agreement with consideration given to the circumstances of the parents adopting and the needs of the child being adopted. The adoption assistance payments may not exceed the foster care maintenance payments that would have been paid had the child been in a family foster home.

The amount of the Adoption Assistance payment can be adjusted up to the maximum allowable payment, with the concurrence of the adoptive parents, when the projected needs of the child change.

Any maintenance subsidy payments paid above 100% of the foster care board rate would not be subject to federal reimbursement.

c. Non-Recurring Adoption Expenses

The Tax Reform Act of 1986 amended Title IV-E to provide for federal reimbursement to the States to pay for non-recurring adoption expenses. Chapter 315 of the Laws of 1988 which added Section 453-a of the SSL, provided for the federal provisions for payment of non-recurring adoption expenses. The 90 day period of increased subsidy payment ("transitional payments") was repealed. 89 INF-28 provides instruction on the non-recurring expenses (Also, see Adoption Services Program Manual).

Social services districts should make payments for non-recurring expenses incurred by or on behalf of the adoptive parents of a child with special needs, when such expenses are incurred in connection with the adoption of a child with special needs through an authorized agency. The child does not need to be IV-E eligible for reimbursement of these expenses. The payments shall be made by the social services district either to the adoptive parents directly or to the authorized agency on behalf of the adoptive parents.

d. Relationship of State Requirements to the Federal Requirements

The similarities between the State and federal requirements are readily apparent. However, eligibility

for an adoption subsidy is more broadly defined by New York than the federal government, which makes it necessary to distinguish between the two and identify the limits of federal participation.

There are three areas that require definition for subsidy eligibility:

- (1) age of child
- (2) initiation of subsidy
- (3) special needs versus hard-to-place.

Federal reimbursement is available as of April 1, 1982, for eligible children adopted after October 1, 1980. The State adoption subsidy program will continue to reimburse social services districts for expenditures made for children who are eligible for State subsidies and adopted prior to October 1, 1980, or after October 1, 1980, but do not meet federal eligibility requirements.

- (1) Age - Federal participation is allowed up to the eighteenth birthday and it may be continued only if it is determined that the handicapping condition warrants continuation beyond age 18, and then only to the child's twenty-first birthday (See Section 473(a)(4) of the SSA).

Section 453(1)(a) of the SSL and 18NYCRR 424.24(c)(15) of the Department Regulations provide for State participation up to age 21 for a child in receipt of subsidy where the child continues to be financially dependent on the parent. In cases where federal reimbursement is lost at age 18 as a result of the handicapping condition not warranting continued payment to age 21, a State reimbursable subsidy must be authorized until the child attains the age of 21, if they were eligible at the time of the adoption and State eligibility otherwise continues (See 453(1)(c) of the SSL).

- (2) Initiation of Subsidy - Generally, adoption subsidy payments for children begin only after an adoption subsidy agreement has been signed, and the adoption has been finalized. In cases where the foster parent is to become the adoptive parent, foster care payments will be continued up to the time of finalization.

For treatment of subsidies for children who will be adopted by parents other than foster parents, see Department Regulation 421.24(c)(2).

NOTE: Upon the death of both adoptive parents, Title IV-E subsidy payments cannot be continued. However, State/local subsidy payments would replace the Title IV-E subsidy, and continue to be made to the legal guardian(s) of an adopted child until the child attains the age of 21.

- (3) Special Needs - In order to receive federal reimbursement, a child must be determined to have "special needs" (See p.27). Children meeting the State's definition of a handicapped or hard-to-place child (Department regulation 18NYCRR 421.24(a)(2) and (3)) may also be eligible for federal Adoption Assistance. However, those children receiving a subsidy solely on the basis of having been freed for six months without being placed (Department regulation 18NYCRR 421.24(a)(3)(i) and (ii)) are not eligible for federal Title IV-E Adoption Assistance.

NOTE: 88 ADM-16 provides instructions on Title IV-E Adoption Assistance eligibility, and the use of the required DSS-3912 form, the Title IV-E Adoption Assistance Eligibility Form. Also the Adoption Services Program Manual should be referenced for discussion of subsidy.

4. Annual Review

The social services district shall determine on an annual basis that the adoptive parents continue to be legally responsible for the child's support, and that the child is in fact in receipt of support from the parents (See Departmental regulation 18NYCRR 426.5(e)). The annual review must document in the case records legal responsibility for support of the child and actual receipt of support.

If the adoptive parents are no longer legally responsible for the support of the child or the child is no longer receiving any support from such parents, no further adoption subsidy payments may be made (Section 453(1)(c) of the SSL).

NOTE: There is no review of income or resources eligibility for the parents or child for the continuation of adoption subsidy, medical subsidy, or Medical Assistance (that is, when eligibility for MA is provided pursuant to a Title IV-E adoption subsidy agreement or under the provisions of COBRA).

5. Authorization

The services authorization document DSS-2970 will be used to authorize both Adoption Assistance and Adoption Services expenditures.

An authorization may only be generated for a six month period (due to present system limitations). However, once eligibility has been established neither the categorical relationship nor the financial eligibility need to be redetermined. If it is determined at the annual review that the adoptive parents are no longer legally responsible or the child no longer is in receipt of support from the parents, the payments must be discontinued. The conditions for continuation of a Title IV-E or state and local subsidy should be reviewed prior to an authorization.

6. Medical Assistance

A child who is eligible for and in receipt of Title IV-E Adoption Assistance payments is automatically eligible for Medical Assistance coverage and for the purpose of eligibility for medical assistance is deemed to be a recipient of ADC.

When a Title IV-E Adoption Assistance payment is authorized, federal law and regulation requires that MA must be provided for the adopted child. State law also requires provision of Medical Assistance for Title IV-E eligible children (Section 453(1)(b) of the SSL).

NOTE: If a child whose guardianship and custody has been committed to a voluntary authorized agency, is adopted with a IV-E subsidy, then a local social services district should open up an MA case for the child.

State regulations require that, when evaluating what medical coverage is available to a child being adopted, eligibility for State medical subsidy should only be considered if a child is not MA eligible.

It should be noted that for the State medical subsidy program there is no federal reimbursement. However, since federal reimbursement is available for Medical Assistance, eligibility for Medical Assistance should be determined in all instances where a child would qualify for a medical subsidy, and if the child is MA eligible, the State medical subsidy should not be given. However, if the child loses MA coverage before age 21, then the medical subsidy should be authorized up to age 21, if the child was eligible for Medical Assistance at the time of adoption.

COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1985) includes provisions covering Medical Assistance for Title IV-E and some other handicapped adopted children:

- (1) A Title IV-E Adoption Assistance payment is not required for the purpose of automatic eligibility for MA. Thus, the need for a "token" IV-E payment was eliminated.
- (2) The requirement that the adoption be finalized in order to grant MA was eliminated as of October 1, 1986. MA may be automatically provided to those children determined to be Title IV-E eligible as soon as the adoption assistance agreement has been signed by the respective parties and approved by New York State Department of Social Services.
- (3) Non-Title IV-E children for whom there exists special medical or rehabilitative needs which make placement for adoption without MA coverage difficult, may be eligible for MA when a non-Title IV-E adoption subsidy agreement is in effect.

In order to qualify under this provision, the child must have been in receipt of or eligible for MA in the three month period prior to the adoption subsidy agreement being entered into.

This COBRA provision extends MA eligibility to handicapped children who are not eligible for Title IV-E Adoption Assistance, without regard to the income and resources of the adoptive parents. Although this provision applies to adoption subsidy agreements which were entered into before, on, or after April 7, 1986, federal reimbursement is not available for medical coverage for periods prior to April 1, 1986.

7. Allocation of Administrative Costs

The main consideration relative to cost allocation requirements for adoption activities is the need to identify and differentiate those elements of Adoption Assistance which are Title IV-E eligible from the Adoption Services activities only claimable under the Social Services Block Grant or from State and local 75/25 funding (Section 372-b of the SSL). This has been accomplished through the use of an additional

(Code 81) to identify Adoption Assistance from Adoption Services (Code 01). These changes have been effected in the WMS system including SSRR. They have also been included in the modification to the Random Moment Sample (RMS) procedures for NYC. Manual Bulletin 143-b should be referenced for additional specifics on cost allocation procedures.

V. REQUIRED ACTION

A. Foster Care

1. Eligibility Process

The following actions are necessary to determine the eligibility status for all children being placed in foster care:

- a. An application must be made by the child's parents, other relatives, or by an authorized representative of the agency having the care and custody or custody and guardianship of the child.

The DSS-2921 (WMS Common Application Form) must be completed and signed.

The children who meet the following Title IV-E requirements (see Department regulation 18NYCRR Part 426) are eligible for federal reimbursement:

- (1) The child must meet the age requirements specified in Department regulation 18 NYCRR 369.2(c). Title IV-E eligibility is limited to children under 18 and to children under 19 years of age who are full-time students expected to complete a program of secondary school or the equivalent level of vocational or technical training before reaching age 19. Beyond 19 years of age, a child's foster care expenses are federally non-participating (FNP).
- (2) The child was removed from his or her home pursuant to a judicial determination, or pursuant to a voluntary placement agreement as allowed by P.L. 96-272.
- (3) Responsibility for care and placement was voluntarily given to or imposed by court order to the social services official or the Division for Youth (DFY).

(4) Care is provided in a certified, licensed, or approved setting.

(5) The child must have a relationship to ADC (see page 7).

b. Eligibility should be determined by the social services district within 30 days of the date of application.

2. Processing of Division for Youth Cases

The New York State Department of Social Services and the New York State Division for Youth (DFY) have an Interagency Agreement which provides for the submission of Title IV-E and Medical Assistance applications to social services districts for children placed in DFY custody. The social services districts should process these cases expeditiously and render eligibility decisions to DFY. Title IV-E cases are also subject to the foster care redetermination requirements. DFY is responsible for providing sufficient information to a social services district so that Title IV-E eligibility can be determined. DFY also is required to supply information on third party health insurance available to youths for whom MA applications are being submitted.

3. Redeterminations

Title IV-E Foster Care cases must be reviewed for the following criteria every six months:

a. AGE - The child must continue to meet the age qualifications as specified in section V(a)(1) (page 40).

b. Judicial Determination - The court order placing the child in the care and custody or custody and guardianship of the social services official or a public agency must remain in effect.

c. Financial Eligibility - Only the child's income and resources shall be considered in a redetermination for Title IV-E Foster Care. Under Title IV-E, the child's net income must not exceed 185% of the applicable foster care need standard which consists of all foster care costs: care and maintenance, administrative costs, clothing allowance, and any special payments.

- d. Parental Deprivation - A parental deprivation factor must exist and be documented for both the initial determination and each redetermination thereafter. The parental deprivation is based on the home from which the child was removed.

Any change in parental status which affects eligibility must be reviewed. If the child no longer meets the deprivation requirement, the case is no longer eligible for Title IV-E Foster Care and a case status change must occur. If on subsequent redeterminations of eligibility a deprivation factor is found to exist, the case should revert back to a Federal reimbursement status under Title IV-E.

- e. Services - A written case plan must be reviewed not less frequently than every six months and must be part of the child's case record (Department regulation 18 NYCRR 428.9).
- f. Foster Care Placement - The child must be placed in a certified, licensed or approved foster family home or be receiving foster care in a non-profit private child care institution or an authorized public child care institution which accommodates no more than 25 children and which is a State licensed or approved facility but not a facility operated primarily for the detention of children who are determined to be delinquent.

Included as FFP eligible foster care placements are Division for Youth foster homes, and DFY residential care facilities which have been designated as meeting Title IV-E requirements.

If all criteria are not met when cases are redetermined for continuing Title IV-E foster care eligibility, the case status must revert to non-Title IV-E (FNP).

NOTE: If a child ceases to be eligible for Title IV-E, the worker should then review the case to determine if the child could be considered for the Supplemental Security Income (SSI) program. If there are conditions which may render the child eligible for SSI, an application for SSI should be submitted to the Social Security Administration.

4. Authorization

In the previous authorization section on page 22, it was stated that the services authorization document serves as the basis for authorizing all aspects of foster care. However, to provide Medical Assistance to these children, it is necessary to establish either a Title IV-E or an MA Only case, using the WMS non-services application and full data entry processes. Pursuant to 18NYCRR 360-2.2(e), redeterminations of MA eligibility are required at least once every 12 months, but may be completed more frequently, in accordance with social services districts' procedures.

5. Medical Assistance

As discussed in Section IV (p.24), those foster children who meet the requirements of Title IV-E are automatically eligible for Medical Assistance.

For all other children in foster care, eligibility for MA must be determined in accordance with the instructions contained in Administrative Directive 81 ADM-10, using the income and resource standards as outlined in 93 ADM-6.

6. Systems Implications

a. WMS/MMIS Instructions

It is necessary to establish a non-services case to provide Medical Assistance to foster care individuals in a Service Case.

When children meet Title IV-E Foster Care criteria, case Type 13 should be opened.

When children do not meet the Title IV-E Foster Care criteria, a full financial determination of eligibility for MA (with Federal participation under Title XIX) is necessary. These children would be opened as case type 20.

b. Services Systems Instructions

- (1). Case Opening Processing - Cases and individuals are registered in WMS via the Application Registration process. The clearance report is evaluated for current or previous ADC eligibility. Individuals

currently in receipt of ADC meet the ADC eligibility requirements (when children have been included in an active ADC case solely as an essential person, these cases should be reviewed for parental deprivation as required for Title IV-E eligibility).

The circumstances for a child who would have been eligible for ADC if application had been made in the month of placement must be documented in the case record.

Individuals determined Title IV-E eligible will be encoded with an eligibility code of 02 on the Services Application.

Individuals eligible for Title IV-E are automatically Title XIX eligible and must have a corresponding non-services case (ADC-case type 13-Upstate Only) opened for purposes of Medical Assistance coverage. For New York City, SERMA processing will provide appropriate MA coverage. In those districts where Income Maintenance or MA staff are responsible for the non-services processing, Services staff should make referrals for processing using current procedures. In districts where Services staff are responsible for processing the non-services cases, the corresponding ADC-case type 13 should be opened.

Individuals who do not meet Title IV-E eligibility requirements need an appropriate Services eligibility determination. Non-Title IV-E eligible children must have a separate MA Only application processed for determination of eligibility for Title XIX (MA). If the child is MA eligible, the district should open the MA case (Case Type 20 for non IV-E) and encode the Services Application with an eligibility code of 08-MA.

Each child receiving foster care must be tracked via the CCRS Supplemental Registration process. All appropriate Assessment Service Plans, movement and legal activities must be reported.

- (2). Social Services Reporting Requirements (SSRR)- Foster Care reporting of SSRR time by upstate counties and via the Random Moment Study in New York City must be reported as appropriate to one of the following activities: Family or Child Counseling/Treatment-code 08 (Title XX funded), Case Management-code 88

(Title IV-E funded) and Determining/Redetermining Eligibility-code 98 (Title IV-E funded). Definitions of these activities can be referenced on page 7 of this directive or in the Integrated Services Information Systems (ISIS) Manual, section eleven.

- (3). Recertification/Redetermination-Individuals who continue to be Title IV-E eligible would be recertified in the prescribed manner. Individuals who are no longer Title IV-E eligible must be recertified with an appropriate eligibility code of other than 02 (FCAA). These requirements can be referenced in Section 3 (Periodic Redetermination) on page 10), of this directive.

B. Adoption Assistance

1. Eligibility Process

For adoptions finalized on or after October 1, 1980 (Adoptions finalized prior to 10/1/80) are not eligible for IV-E reimbursement):

(1) Financial

Relatedness to either the Title IV-E, SSI or ADC program must be established at the time that the adoption petition is filed. Although the last Title IV-E redetermination may have been completed less than six months prior to the adoption petition being filed, nevertheless, the case must be reviewed again to confirm ongoing relatedness to either the IV-E, ADC or SSI program.

Federal reimbursement for Adoption Assistance payments is available once the subsidy agreement is signed, and the child is placed in the home.

(2) Programmatic

The following criteria must also be met in determining initial and continuing eligibility for Title IV-E Adoption Assistance.

- (a) The child in accordance with Department regulation 18NYCRR 421.24 was determined to have a specific factor or condition because of which it is reasonable to conclude that the

child cannot be placed without adoption assistance, or that the child was adopted by his foster parents after having been with that family at least eighteen months. If the child is not placed with foster parents and he receives a subsidy solely on the basis of having been freed for six months without being placed, he or she is not programmatically eligible for a federal subsidy.

- (b) At the time the adoption petition is filed the child must meet the ADC relationship requirement specified in Section 2(a)(p. 33) which includes receipt of Title IV-E foster care or that the eligibility requirements of the Supplemental Security Income Program (SSI) were met. When attempting to ascertain an SSI relationship, a referral must be made for a disability review to determine if a child meets the categorical requirements of the SSI Program. The MA Disability Manual contains further information on disability reviews.
- (c) The requirements of Section 372-f of the SSL have been met, i.e., registration with the Statewide Adoption Service and, when required, the child has been photo-listed.
- (d) An adoption agreement has been executed prior to the final decree of adoption.
- (e) The child shall not have attained the age of 18, or age 21 if it is determined by the social services district that the child has a mental or physical handicap which warrants continuation of assistance. It shall be noted that subsidy under the State program continues to the age of 21.
- (f) The adoptive parents must continue to be legally responsible for the support of the child and the child continues to receive support.

(3) Review

Once eligibility for Adoption Assistance payments under Title IV-E is established, annual reviews are necessary. The only issue in these reviews is to

verify that the adoptive parents continue to be legally responsible for the support of the child, and that the child continues to receive such support. This is not a review for income eligibility or subsidy change.

2. Medical Assistance

Only those adopted children who meet the requirements of Title IV-E are automatically eligible for MA and are to be provided with MA coverage. Children who are handicapped and meet the COBRA requirements (see page 39) are eligible for medical assistance. Otherwise, families of children who are not eligible for MA should be advised of the availability of the MA program and given the option to apply for MA if they choose.

Those children determined to be ineligible for MA may qualify to receive a medical subsidy in accordance with Section 454 of the SSL. It is important to note that MA is federally reimbursable while the medical subsidy is not. Therefore, a child should not receive a medical subsidy unless an eligibility determination for MA has been done, and the child found to be ineligible for MA.

State participation in the cost of medical care furnished to those children who receive the State medical subsidies, should be claimed in accordance with instructions from the Bureau of Local Financial Operations. (See Fiscal Reference Manual, Vol. II, Ch. 3).

For those children who are receiving non IV-E adoption subsidies, and who are not eligible for MA via COBRA, eligibility for MA must be determined. The child's eligibility must be based upon a household size consisting of himself or herself, his or her adoptive parents as legally responsible relatives and any other family members who may be applying, with all the income and, if applicable the resources of the applicants and responsible relatives, including the adoption subsidy, considered in this determination. Of course, the family is to be given the option of choosing who shall apply for assistance so as to make the choice most beneficial to the family.

3. Systems Implications

a. WMS/MMIS Instructions

At present it is necessary to establish a non-services case to provide MA to adoption assistance individuals in a service case.

When children meet Title IV-E Adoption Assistance criteria, case Type 20 must be opened.

When children do not meet the Title IV-E criteria, full financial determination of eligibility for MA (with federal participation under Title XIX) is necessary. These children would be opened as case Type 20.

NOTE: Only those children eligible for MA are to be included in MMIS and assigned an MA ID Card.

b. Services Systems Instructions

1. Case Opening Processing

The process for opening a case for adoption assistance depends on whether the case was opened prior to or subsequent to finalization.

- (a) Prior to Finalization - Processing a Subsidy - the child, as a family (case) of one, is opened in the Services component of the Welfare Management System. The eligibility of the child will depend upon the foster care status of the child. If the adoptive parents are certified foster parents and the child is Title IV-E eligible, eligibility code 02 (Title IV-E) should be entered on the Services Application and the corresponding Non-Services case (Case Type 13) should be opened for MA coverage. In this instance, maintenance and administrative costs would be Title IV-E foster care reimbursable. If the prospective adoptive parents are not certified or approved foster parents

or the child is not Title IV-E eligible, the child must have a separate MA Only application processed for determination of eligibility for Title XIX (MA). If the child is MA eligible, open the MA case and encode the Services Application with an eligibility code of 08 (Case Type 20). If the child is not Title XIX eligible, a Services income eligibility determination should be made and if Income Eligible, the Services Application encoded with an eligibility code of 14-Income Eligible. Complete case processing with Full Data Entry (FDE), completion of the Services Financial Eligibility Display/Turnaround (SFED/T) authorizing the adoption subsidy as a purchase of service and supervisory review and approval. Each child receiving Adoption Assistance must be tracked via the CCRS Supplemental Registration process. All appropriate Assessment Service Plans, movement, adoption, and legal activities must be reported.

When the adoption is finalized, the WMS Services case is closed using reason code 573-Adoption Subsidized or code 574-Adoption Not Subsidized. The corresponding non-services Case Type (13 or 20) must also be closed.

- (b) Subsequent to finalization - the child, as a family of one, would be opened in the Services component of the Welfare Management System using a new case number, the child's adoptive name and a new client identification number.

If the child is Title IV-E eligible, enter 02 as the eligibility code. If Title IV-E eligible, open the non-services Case Type 20 for MA coverage.

If the child is not Title IV-E eligible, use the appropriate eligibility code.

No CCRS Supplemental Registration is required.

2. Recertification/Redetermination

Recertification of children subsequent to finalization will be done every six months in WMS.

3. Social Services Reporting Requirements

Adoption Assistance reporting of SSRR time for upstate counties and via the Random Moment Study for New York City must be reported to the appropriate activities of Adoption/Casework Counseling-code 01 (Title XX funded) and Adoption Assistance-code 81 (Title IV-E funded). Definitions of these activities can be referenced on page 32 of this directive.

VI. EFFECTIVE DATE

This Administrative Directive will be effective November 17, 1993.

Frank Puig
Deputy Commissioner
Division of Services and Community
Development