

Overview of Title IV-E Funding for Legal Representation

Commission to Develop a Pilot Program to Provide Legal Representation to Families
in Child Protective Services - August 22, 2022

Title IV-E Foster Care Program funding

- ***Title IV-E authority and requirements:*** Title IV-E of the Social Security Act authorizes federal funding of foster care, as well as other child welfare programs including adoption assistance, kinship guardianship assistance, and services for older youth who have aged out or emancipated from foster care.
 - ***Open-ended entitlement:*** Title IV-E program is an entitlement program with funding authorized on a permanent and open-ended basis. As an entitlement program, it guarantees certain benefits to eligible children. It does not displace any other funding, and federal authority to appropriate Title IV-E funds remains in place without periodic reauthorization required.
 - ***Title IV-E State Plan:*** The receipt of Federal funds under Title IV-E is contingent upon an approved State Plan to provide foster care, adoption assistance and guardianship assistance. The State Plan describes the “eligible activities” under the state IV-E programs.¹
 - ***Public Assistance Cost Allocation Plan (PACAP) required:*** Federal funding for administrative costs under Title IV-E is contingent on an approved Public Assistance Cost Allocation Plan (PACAP) that outlines the procedures to identify, measure and allocate costs to all program administered or supervised by the State agency.²
- ***Federal Financial Participation for Foster Care:*** Under Title IV-E, the federal government reimburses States for a percentage of IV-E eligible costs of the state foster care program for Title IV-E eligible children (not all children in foster care are eligible). The percentage is referred Federal Financial Participation (FFP) rate, or match rate. Different FFP rates apply to different categories foster care program costs. The FFPs by category are listed below.
- ***Types of Eligible Costs for IV-E Foster Care Funds:*** Under Title IV-E, the federal government reimburse states for foster care program costs in several categories, including:³

¹ Attachment D OMB Approval No. 0970-0433 Expiration Date: 11/30/2022; Agency Plan for Title IV-E of the Social Security Act: https://www.acf.hhs.gov/sites/default/files/documents/cb/pi1807_attachment_d.pdf

² Code of Federal Regulations, Title 45, section 95.505: <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-95/subpart-E/section-95.505>

³ See 42 U.S. Code section 674. <https://law.justia.com/codes/us/2020/title-42/chapter-7/subchapter-iv/part-e/sec-674/>

Overview of Title IV-E Funding for Legal Representation

Commission to Develop a Pilot Program to Provide Legal Representation to Families
in Child Protective Services - August 22, 2022

- ✓ **Foster Care Maintenance Payments (FCMP) Costs:** Payments made to caregivers to provide shelter, food and clothing for IV-E eligible children in foster care placements. (Match rate=Federal Medical Assistance Percentage (FMAP)⁴, currently 70.2%)⁵
- ✓ **Foster Care Administrative Costs:** Administrative costs of the program. (Match rate=50%).
 - **In-Placement:** case planning and management, *legal representation of child/parent*, and demonstration project operational costs; and
 - **Pre-Placement:** case planning and management, *legal representation of child/parent*, eligibility determination, provider and agency management and demonstration project operational costs.
- ✓ **Child Welfare Information System Costs:** Costs of the planning design, development and operation of statewide mechanized data collection and information retrieval systems. Match rate=50%)
- ✓ **Training Costs:** Costs of training that increases the ability of current or prospective foster parents, guardians, agency staff members, court staff, institutions, attorneys (including IV-E agency attorneys and attorneys representing children or parents) and advocates to provide support and assistance to foster children. (Match rate=75%)
- ✓ **Waiver Demonstration Projects:** These are projects approved by the U.S. DHHS that involve the waiver of certain provisions of the law to allow states to use federal IV-E funds for foster care more flexibly to implement alternative services and supports and generate knowledge about innovative and effective practice.⁶ (Match rate = 50%)

Title IV-E Funds for Legal Representation for Families

- **Authorization:** In 2019 the U.S. DHHS/ACF Children's Bureau issued revised and new policies allowing the costs of independent legal representation to children and parents may be claimed as Title IV-E foster care administrative costs, when provided by an attorney to:
 - Children in Title IV-E foster care placements and parents of these children; or

⁴ The Federal Medical Assistance Percentage (FMAP) is the federal share of the cost of state Medicaid services. FMAP is computed from a formula that factors in the State's average per capita income relative to the national average: <https://www.kff.org/wp-content/uploads/2013/01/8352.pdf>

⁵ Medicaid and CHIP Payment and Access Commission, Exhibit 6. Federal Medical Assistance Percentages (FMAPs) and Enhanced FMAPs (E-FMAPs) by State: <https://www.macpac.gov/wp-content/uploads/2022/08/EXHIBIT-6.-Federal-Medical-Assistance-Percentages-and-Enhanced-FMAPs-by-State-FYs-2020-2023-1.pdf>

⁶ James Bell Associates. (2021). Title IV-E waiver demonstrations: History, findings, and implications for child welfare policy and practice. Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services. <https://www.acf.hhs.gov/sites/default/files/documents/cb/2020-waiver-summary-508.pdf>

Overview of Title IV-E Funding for Legal Representation

Commission to Develop a Pilot Program to Provide Legal Representation to Families
in Child Protective Services - August 22, 2022

- Children who are candidates for Title IV-E foster care and parents of these children.

Because Title IV-E funds are an open-ended entitlement, this made additional funds available to states for legal representation, without affecting other IV-E foster care reimbursement.

- **Expansion to multidisciplinary teams:** In April 2020, the Children’s Bureau issued a new policy clarifying that costs for paralegals, investigators, peer partners, or social workers may also be claimed as Title IV-E foster care administrative costs to the extent they are necessary to support an attorney providing independent legal representation as described above.
- **Reimbursable Services:** See separate handout: “*Pre-Petition Legal Representation Reimbursement - Federal and State Guidance*”, under section III: “*What types of pre-petition legal services to families of foster care candidates are reimbursable?*”
- **Note regarding Family First:** The Title IV-E funds for legal representation of children and parents are separate and distinct from IV-E funds available for prevention services under the Family First Prevention Services Act (FFPSA); Family First funds are specifically focused on mental health, substance use and parenting support services and have separate requirements for authorization.

Requirements to Receive IV-E Funds for Independent Legal Representation

- **Role of IV-E Agency:** Only the state Title IV-E agency can claim the federal matching funds for independent legal representation for children and families under the foster care program. However, a Title IV-E agency may arrange for independent legal representation services to be delivered by another entity through a contract or other type of agreement, such as a memorandum of understanding with the IV-E agency.
- **State matching funds:** The state share of costs claimed for the Title IV-E foster care program must be sourced from state or local appropriated funds or donated funds.
 - State matching funds may *not* be sourced from funds provided to the state under another federal program.⁷ For example, federal Title IV-B Court Improvement Program funds could not be used as a state match for IV-E Foster Care funds.
 - Legal Services Corporation (LSC), which funds civil legal services for low-income citizens, is established in law as a non-profit organization. LSC receives federal funds, however the agency asserts that LSC funds are ‘non-federal funds’ once received by LSC and remain non-federal funds when provided to grantees.⁸

⁷ U.S. DHHS, Administration for Children, Child Welfare Policy Manual Section 8.1F Title IV-E, Administrative Functions/Costs, Match Requirements:

https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=35

⁸ Legal Services Corporation, Advisory Opinion 2019-004, Dec. 13, 2019, Use of LSC Funds as Non-Federal Matching

Overview of Title IV-E Funding for Legal Representation

Commission to Develop a Pilot Program to Provide Legal Representation to Families
in Child Protective Services - August 22, 2022

- **Public Assistance Cost Allocation Plan Amendment:** To receive federal reimbursement for independent legal representation, the Title IV-E agency must amend its Public Assistance Cost Allocation Plan (PACAP) with the Children’s Bureau to identify the types of administrative activities the agency intends to claim for legal representation and the methodology it will use to identify allowable costs. (According to the federal Child Welfare Policy Manual, a title IV-E State Plan amendment, is *not* required: **“Question: Must the title IV-E agency submit a title IV-E plan amendment to claim administrative costs for independent legal representation? Answer: No, a title IV-E plan amendment is not necessary for the title IV-E agency to claim administrative costs for independent legal representation by an attorney for an eligible child and/or his/her parent.”**⁹
- **IV-E Eligibility:** Title IV-E funds, including those for legal representation, are only available for eligible costs incurred for IV-E eligible children.
 - For children in foster care (in-placement), IV-E eligibility is determined based on a series of requirements in federal law including, but not limited to, requirements relating to the removal of the child from the home, the foster care placement, and income eligibility (based on AFDC eligibility).¹⁰
 - If a state provides legal representation to children, or their parents, without direct reference to the child’s IV-E eligibility, the state must have an allocation method to assure that IV-E funds are claimed for only the proportionate share of costs.¹¹ The state’s proportion of children in foster care who are IV-E eligible (the “penetration rate” or “participation rate”) may be used for this allocation. This rate was 48% in FY 2020 and 44% in FY2021. *See separate handout: “Maine IV-E Funding”*
 - For legal representation provided during the pre-placement period, the allocation must be based on a determination that the child is a *candidate* for foster care. Eligibility for IV-E funds is one component of the candidacy determination. *See separate handout: “Pre-Petition Legal Representation Reimbursement - Federal and State Guidance”, section II on “Who is an eligible “candidate” for foster care?”*

<https://www.lsc.gov/about-lsc/laws-regulations-and-guidance/advisory-opinions/advisory-opinion-2019-004>; see also LSC Advisory Opinion 2020-005, November 6, 2020, Non-Federal Status of LSC and LSC Grants and Contracts: <https://www.lsc.gov/about-lsc/laws-regulations-and-guidance/advisory-opinions/advisory-opinion-2020-005>

⁹ U.S. DHHS, Administration on Children and Families, Children’s Bureau, July 20, 2020; Technical Bulletin, Frequently Asked Questions: Independent Legal Representation: https://www.acf.hhs.gov/sites/default/files/documents/cb/technical_bulletin_faq_legal_representation.pdf

¹⁰ 42 U.S. Code § 672 - Foster care maintenance payments program.

¹¹ U.S. DHHS, Administration for Children, Child Welfare Policy Manual Section, 8.1C TITLE IV-E, Administrative Functions/Costs, Calculating Claims: https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=74