

**ECONOMIC ASSISTANCE**  
**IV-E FOSTER CARE ELIGIBILITY**  

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**Service Chapter 447-10**

**North Dakota Department of Human Services**  
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**Bismarck, ND 58505-0250**

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## **Economic Assistance IV-E Foster Care Eligibility 447-10**

### **Introduction and Intent 447-10-05**

**(Revised 11/1/10 ML #3249)**

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It is the intent of the Department that every effort be made by the social worker/case manager and eligibility staff to secure sufficient information to determine if a child is Title IV-E eligible. It is the responsibility of the case manager to secure all needed information and provide that information to the eligibility worker. When a child is determined "not eligible" for Title IV-E because some of the required information is missing, there may be a greater financial cost to the state and county and a resulting reduction in other needed children's services.

If a parent refuses to provide needed information, the case manager should do all they can including securing a court order compelling the parent to cooperate. If a parent still refuses to provide needed information, consideration should be given to requiring the parent to pay 100% of the cost of care.

An eligibility determination must be completed for ALL children in Foster Care to determine if they are entitled to State or Federal benefits. Each of the criteria that must be considered when making this determination is discussed below. Most of these criteria apply to all children.

**NOTE:** Information related to foster care and subsidized adoption is confidential. Refer to N.D.C.C. § 50-06-15 and NDDHS chapter 110-01.

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**Title IV-E Program 447-10-10**  
**(Revised 5/15/07 ML #3087)**

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The TITLE IV-E program, authorized by Title IV, Part E of the Social Security Act, provides funds to states for maintaining certain children in foster care or in adoptive families. It also provides funds for the administration of the program and for the training of staff who work with the children. The IV-E program is not a new program. It replaced the old Title IV-A Foster Care program (AFDC-FC). Children classified as Title IV-E eligible must have some relationship to the general AFDC program authorized under Title IV, Part A (IV-A) of the Social Security Act in place in each state on July 16, 1996, and must meet certain other criteria. This manual defines and explains these criteria.

Assuring that all children who are in the custody of the state are considered for Title IV-E eligibility and certified if determined eligible, is the single most important step a state can take to increase funds available for child welfare. Experience in North Dakota and in other states indicates that identifying and certifying all eligible children for Title IV-E funds can increase the amount of federal dollars available to the state for child welfare programs.

This manual is designed to assist the eligibility specialist in the various tasks necessary to determine whether or not individual children meet the Title IV-E eligibility criteria. If individual children do not meet the Title IV-E eligibility criteria, then eligibility for Emergency Assistance or Regular Match Foster Care payment needs to be examined.

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**Title IV-E Eligibility 447-10-15**  
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Title IV-E benefits are an individual entitlement of certain foster care children. For these children, the federal government shares in the costs of maintaining the child. In addition it pays the state for the staff and administrative costs which are incurred when working with the child, the child's family, and the care provider. Finally the state receives 75% of the costs of training staff who work with Title IV-E eligible children, the child or who administer the foster care system for the child. There are two major categories of Title IV-E status: [Eligibility and Reimbursability](#).

**The IV-E eligibility and reimbursability are determined on a one-time basis when the child enters foster care.** Title IV-E eligibility does not automatically confer federal benefits. The reimbursability criteria must be met for the state to receive federal support for the child. Once established, a child's eligibility and reimbursability will continue as long as the court order that sanctioned the child's removal from the home remains in effect.

**There is only one instance when a child in continuous care would lose eligibility for Title IV-E:**

- When the youth reaches the age limit for the program.

An assessment of several Title IV-E criteria is required to determine whether the child is federally reimbursable. The child must be eligible to be reimbursable. The following discussion reviews all of the criteria, which make up the concepts of eligibility and reimbursability.

For foster care reimbursement, the child must be placed in a licensed (not provisional) or approved affidavit foster home/facility. Foster

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family homes/facilities that are approved must be held to the same standards as foster family homes that are licensed. Anything other than full licensure or approved affidavit is insufficient for meeting foster care eligibility requirements. (CFR 1355.20, effective March 27, 2000)



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**Initial Eligibility 447-10-20**  
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A child is Title IV-E eligible if two basic criteria are met when the child entered care. These are:

- The initial court order that authorized the child's removal from the home, contained a judicial determination to the effect that "continuation in the home is contrary to the welfare of the child," and reasonable efforts were made to prevent the child's removal from home or reasonable efforts were not required (i.e. aggravated circumstance) to prevent a child's removal from the home; reasonable efforts were made to place siblings in the same foster care, relative, guardianship, or adoptive placement unless it is determined that such a joint placement would be contrary to the safety or well being of any of the siblings, and the case of siblings removed from their home who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is contrary to the safety or well being of any of the siblings.
- The child met the AFDC relatedness test in the month the court petition to place the child in out of home care was filed. (Effective July 1, 1997, wherever AFDC is mentioned here, it relates to the eligibility rules as of July 16, 1996, pursuant to P.L. 104-193.)

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**Eligibility Month 447-10-20-05**  
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The eligibility month is the month during which the petition for the care of the child, which eventually led to a court ordered removal of the child, is filed. It is important to note that the date the child enters foster care does not necessarily define the eligibility month.

The date a child was removed as the result of a court order may be different from the date of the actual petition by days, weeks, or even months. Here again it is the date of the petition, not the removal, which defines the eligibility month. If no petition was filed, then the date of the emergency or temporary removal order will be used to determine the eligibility month.

Occasionally a petition is filed which results in an order granting the County Social Service Board, Division of Juvenile Services (DJS), or the Executive Director custody of the child, but allows the child to remain in his/her own home. If, at a later time, the custodian wants to remove the child from the home, a second order must be obtained which contains the determination that "continuation in the home is contrary to the best interest of the child." The eligibility month becomes the month that the petition or motion was filed which resulted in the second order that authorized the child's removal from the home. It is important to note, \*each time a child is removed from the home, an order must be obtained that contains the required Title IV-E judicial determination regardless of whether the agency retained legal custody while the child was in the home.

Except for a Trial Home Visit: A trial home visit must be a planned, formalized, agency-supervised visit in the reunification home for a specified period of time not to exceed six months, unless otherwise authorized by the court. A trial home visit must be discussed at

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permanency planning and entered into a child's case plan, and no foster care payments are made during the visit period. Casual or incidental visits, e.g., to attend a wedding or funeral, are not considered "trial home visits" even if they are part of the child's reunification plan.

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**Legal Status 447-10-20-10**  
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Applies to all children in foster care.

A court order\* is an order from a court of competent jurisdiction removing the child from the home and placing responsibility for the care of the child with a public agency. The court order must specify that continuation in the home is contrary to the welfare of the child or that the placement is in the best interest of the child. This requirement maybe met by language that indicates that the child is being placed in State custody due to the child's need for treatment, rehabilitation, and supervision. This language must be in the removal order.

- \* Documentation of Judicial Determinations: If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders, a transcript of the court proceedings is the only other documentation accepted to verify that these required determinations have been made. Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations.

Federal child welfare requirements and North Dakota law requires "reasonable efforts" findings to prevent the removal of the child from the home (or reasonable efforts were not required such as in the case of aggravated circumstances) and to make and finalize a permanent plan for the child. A judicial determination must also be made addressing sibling placements and/or family connections.

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Removal of a child from the child's home for placement in foster care must be based on judicial findings stated in the court's order, and determined on a case-by-case basis in a manner that complies with the requirements of Titles IV-B and IV-E of the Social Security Act [42 U.S.C. 620, et seq., and 42 U.S.C. 6701, et seq.], as amended, and federal regulations adopted thereunder. These regulations require that the initial court order and subsequent court reviews document the agency's reasonable efforts as described above.

**Independent Living Language:** This is an additional requirement for youth age 16 and over. The court must find services have been /will be provided to assist youth in making the transition from foster care to independent living in all Dispositional and Permanency Hearings.

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**AFDC Relatedness 447-10-20-15**  
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Applies to Title IV-E benefits only.

In the eligibility month the child must have had a relatedness to the Aid to Families with Dependent Children Program authorized under Title IV, Part A of the Social Security Act.

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**AFDC Relatedness Test 447-10-20-15-05**  
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**Applies to Title IV-E benefits only.**

A child meets the AFDC relatedness test if one of the following conditions is met:

- The child would have been eligible for AFDC based on July 16, 1996 rules; or
- The child did not live with the AFDC specified relative in the eligibility month\*, but did live with the specified relative in any of the preceding six months and would have received AFDC in the eligibility month if he/she had been living with the specified relative and an application had been made.

\* based on July 16, 1996 rules.

Both tests require that you look at the home from which the child was legally removed. The removal home for IV-E eligibility determination is the household of the person(s) from whom custody of the child was judicially taken or voluntarily given to the State.

To be IV-E eligible, a child must have lived with a parent or other specified relative at some point in the preceding six months of the month of the initiation of court proceedings to remove the child. The "living with" and "removal from" requirements have to be satisfied by the same specified relative. If a child lived with no relative during this period, the child is not IV-E eligible during the entire episode of foster care.

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The second test requires reconstruction of the child's situation in the eligibility month to determine whether AFDC eligibility was possible. In essence, the tests measure the same set of categorical circumstances in which the child found himself. In the first test those circumstances were actually documented; in the second, the agency must attempt to determine retrospectively whether those circumstances existed.

To determine the preceding period to be considered, first identify the date on which the petition to remove the child was filed. (Note that this may differ from the "clocked" petition date.) In the event that no petition was submitted, use the date of the earliest court order, which removes the child. Beginning with the month preceding this date, count back six months. The period begins on the first day of that six-month period and ends on the petition date.

Three circumstances which define AFDC eligibility (or hypothetical AFDC eligibility) are the following for Title IV-E purposes:

1. Living with a Specified Relative

During the month(s) under consideration, the child must have lived with a specified relative. A specified relative is defined as:

- a. Any relation by blood (including half-blood), marriage, or adoption who is within the fifth degree of kinship to the dependent child.

The caretaker relative must therefore be a parent (1st degree), grandparent (2nd degree), sibling (2nd degree), great-grandparent (3rd degree), uncle or aunt (3rd degree), nephew or niece (3rd degree), great-great grandparent (4th degree), great-uncle or aunt (4th degree), first cousin (4th degree), great-great-great grandparent (5th degree), great-great uncle or aunt (5th degree), or a first cousin once removed (5th degree).

- b. Stepfather, stepmother, stepbrother, and stepsister.
- c. Persons who legally adopt a child, as well as the natural and other legally adopted children of such persons; or



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- d. Spouses of any persons named in the above groups even after the marriage is terminated by death or divorce.

A child is considered to have been "living with" a parent or other specified relative if the child resided with that person for at least one night in any household during the period under consideration. In the absence of evidence to the contrary, the intent to live with the person should be assumed.

**EXAMPLE A:**

The petition is filed for placement of a child on July 31, 2004, and the child went into foster care on that day. The period to be considered for the "living with" requirement is January 1, 2004, through July 31, 2004. The child lived with friends for the month of January, returned to the parental home in February, and then a run away shelter until the child's placement in foster care. Since the child resided with the specified relative within six months of the petition to the court that let to the removal, the child may be IV-E eligible, assuming other IV-E conditions are met.

**EXAMPLE B:**

The petition is filed for placement of a child on July 31, 2004, and the child went into foster care on that day. The period to be considered for the "living with" requirement is January 1, 2004, through July 31, 2004. The child lived in a runaway shelter continuously from December 25, 2003, through July 31, 2004. This child is not IV-E eligible during the entire foster care episode, which commenced July 31, 1999.

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**EXAMPLE C:**

A child lives with a related caretaker who is not the child's legal guardian for seven months before the caretaker contacted the agency to remove the child from his/her home. The agency petitions the court and the court removes custody from the parents and the agency physically removes the child from the home of the related caretaker. The child is ineligible for IV-E foster care since he or she had not lived with a specified relative who is the child's legal guardian within six months of the agency's petition to the court.

Removal home:

Once the "living with" requirement is established, the next step is to determine the removal home to be used in the deprivation and resource test for AFDC relatedness. The applicable court order(s) are critical for determining the removal home, it is the legal home of removal which is the focus of the IV-E eligibility determination. All of the signed court orders pertaining to each case must be in the case file.

Federal regulations effective March 27, 2000, revised the requirements of a "removal home" to include a provision for "constructive removal," defined to include all of the following:

- Non-physical removal of the child.
- The child continues to live with a relative or non-relative caretaker.
- The child lived with a parent or other "specified relative" within the preceding six months.
- The legal custody of the child was removed from a parent or other "specified relative."

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“Removal” previously meant strictly a physical removal from the home of a specified relative. The new federal regulations effective March 27, 2000, added the concept of “constructive removal,” which is a non-physical removal and applies to situations where a child is living with a relative or non-relative caretaker but has lived with a parent or other specified relative who is the child’s caretaker within the last six months, and legal custody is removed from the parent/guardian and the child continues to reside with the caretaker.

For example, child was living with mother. Mother left child with grandmother – mother failed to return. Court removed custody from mother and gave care, custody, and control to county social services. Court order had all requisite foster care findings and all other IV-E requirements were met.

Grandmother was licensed to provider foster care. This is a IV-E eligible situation. It is considered a constructive removal.

Federal Regulations provide (1356.21):

A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the State agency.

A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties.

Refer to the following chart entitled “Home of Removal” together with sample cases “Six

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Case Examples – Is this Constructive Removal” to help identify case situations which can be claimed as “constructive removals.” Please refer your questions to the regional supervisor at your human service center, or Children and Family Services Division.

**HOME OF REMOVAL**

		Title IV-E		
Child		Old Federal Regs	Federal Regs 3/27/00	Capitola Case*
1	Lives in Court Ordered Removal Home <b>Example: Case #1</b>	N	N	--
2	Lived with no relative prior 6 months <b>Example: Case #2</b>	N	N	--
3	Physical removal from eligible Court Ordered Removal Home <b>Example: Case #3</b>	E	E	--
4	Not physically removed by Court Order Lived with Eligible Court Ordered Removal Home within 6 months “Constructive Removal” <b>Example: Case #4</b>	N	E	E
5	Not physically removed by Court Order Lived with Eligible Court Ordered Removal Home over 6 months ago <b>Example: Case #5</b>	N	N	E

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6	Not physically removed by Court Order Lives with relative over 6 months Court Ordered Removal Home not eligible <b>Example: Case #6</b>	N	N	
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\* Capitola Case: Land v. Anderson case re: "constructive removal" – appeal pending.

**Six Case Examples – Is This Constructive Removal?**

**Case #1:** Child has been legally removed from parent’s custody into agency custody, with the stipulation that the child may reside in the parent’s home under agency supervision until the agency decides otherwise. In other words, the child is still at home after the court ordered “legal” removal. This child was not IV-E eligible under the old rules and is not IV-E eligible under the new rules. **If child needs to enter foster care, a new court ordered removal with all requisite foster care language is required. This applies to any child.**

**Case #2:** Child lived with no relative during the six months prior to the petition or court order month. Under both old and new federal rules, this case is not IV-E eligible since it does not meet the AFDC requirement of living with a specified relative in the six months preceding application.

**Case #3:** Child is physically removed from parent’s or other relative’s home by court order. The removal home was AFDC eligible (or would have been eligible) in the removal month. Case is Title IV-E eligible under both old and new regulations.

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**Case #4:** Child was legally removed by court order from an AFDC eligible home, in which the child was not residing in the petition/court order month, but in which the child lived within the six months preceding that month. The child would not have been eligible under the old federal regulations because there was no physical removal. Under the new federal regulations, the case is Title IV-E eligible, as the new regulations consider this a “constructive” removal.

**Case #5:** This is the Capitola Land case. The court legally removed the child from an AFDC eligible home which the child had left more than six months previously. At the time of court action, the child was residing in another relative’s AFDC eligible home. Under the old regulations this was not Title IV-E because there was no physical removal pursuant to the court order. The new regulations say this is not Title IV-E eligible because the child did not live with the AFDC eligible relative during the six months prior to the petition/court order month. The Land v. Anderson decision holds this case to be Title IV-E eligible. The Land v. Anderson decision of the California Supreme Court is under appeal in the federal Ninth Circuit Court.

**Case #6:** In this situation, the removal home was not AFDC eligible, but the current home where the child resides is AFDC eligible. This child is not Title IV-E eligible under the old rule (no physical removal) and not Title IV-E eligible under the new rule (constructive removal home was not Title IV-E eligible).

**NOTE:** In any case eligible for foster care, the court order must have all requisite foster care elements.

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2. Deprivation

The AFDC deprivation factor means that the child has been deprived of the support of one or both parents as the result of:

- a. Death of a parent
- b. Continued absence of parent:
  - i. Separation or Divorce
  - ii. Imprisonment
  - iii. Unmarried Parenthood
  - iv. Desertion/Abandonment.

Absence due solely to active duty in the armed forces, employment, school, or training is not deprivation. Also, if a parent is expected to return home within 30 days, deprivation is not present.

- c. Physical or mental incapacity of a parent. The incapacity must last at least 30 days and must reduce the person's ability to work or provide care for a child and must be documented in the case record.

Incapacitation may be demonstrated by any one of the following:

- i. A visually observable incapacity documented by the caseworker.
  - ii. A medical report from a physician indicating that the incapacity will exist for at least 30 days and impairs ability to work or care for the child.
  - iii. A parent's receipt of SSI for disability or blindness, or recognition of disability or blindness by the Veteran's Administration or Social Security Administration.
- d. Unemployment or underemployment of the principal wage earner.

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A child living with both parents is deprived of parental support if the principal wage earner is unemployed and meets requirements listed below.

The parent who earned the greater amount in the 24 month period prior to the eligibility month is the principal wage earner. This parent remains the principal wage earner for as long as the child is in custody during the current custody episode.

To meet deprivation requirements due to unemployment, the unemployed parent must have a connection to the labor force. Connection to the labor force means that at least one for the following applies:

- i. The principal wage earner is currently receiving, was eligible to receive, or has received Unemployment Insurance Benefits within one year prior to the eligibility month.
- ii. The principal wage earner has earned gross income of at least \$50 in each of any six quarters within a period of 13 consecutive quarters within one year prior to the quarter of the eligibility month.

To calculate this, identify the 13 quarters prior to the eligibility month and identify in which of those quarters the principal wage earner had an earned gross income of at least \$50 for the quarter. Then take all of the quarters in which at least \$50 was earned and determine if at least six of them fell with 13 consecutive quarters.

- iii. The principal wage earner has participated in a job-training program in each of any six quarters within a period of 13 consecutive quarters within one year prior to the eligibility month.



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- iv. Attended, full time, an elementary or secondary school, vocational or technical training course designed to prepare the individual for gainful employment.

Attendance/participation in activities in d) above cannot be substituted for more than four of the six required quarters of work over an individual's lifetime.

To calculate this, identify the 13 quarters prior to the eligibility month and identify in which of those quarters the principal wage earner had participated in a job-training program.

Then take all of the quarters in which job training applied and determine if at least six of them fell within 13 consecutive quarters.

- e. When calculating connection to the labor force, a combination of earned income and participation in a job-training program can be used to meet the six quarters requirement.

Underemployment of the Principal Wage Earner.

If a child lives with both parents, the child is deprived of parental support if the principal wage earner worked less than 100 hours during the eligibility month. If employed more than 100 hours during the calendar month, the work must have been intermittent. Intermittent is defined as having worked less than 100 hours during the two calendar months immediately prior to the eligibility month and expected to work less than 100 hours the month following the eligibility month.

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**AFDC GROUP**

The AFDC group (filing unit/household composition) for initial IV-E eligibility determination is the grouping of persons from the removal home whose income and assets are considered in determining financial need.

1. If the child's parent was the caretaker relative from whom custody was judicially taken or voluntarily given to the State, the AFDC group includes:
  - a. The child;
  - b. Biological or adoptive parents; and
  - c. Biological, adoptive, and half-siblings of the foster child who meet the definition of dependent child and who live in the same household.
2. If the caretaker relative from whom custody was judicially taken or voluntarily given to the State was not the child's parent, the AFDC group includes:
  - a. The child; and
  - b. Any biological, adoptive, and half-siblings of the foster child who meet the definition of dependent child, and who live in the same household.
3. Any household member receiving SSI benefits is not counted as a member of the AFDC group, unless the household member is the foster child. In addition, the SSI benefits and any other income or assets of the SSI recipient are not counted in determining financial need. (the foster child is counted as a member of the AFDC group, even if the child has SSI. The child's income and assets are excluded.)
4. A stepparent is not counted as a member of the child's AFDC Group, but is a member of the stepparent's AFDC group. The stepparent's AFDC group is utilized in deeming the stepparent's income.

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5. A child receiving adoption assistance, other than the foster child, may be excluded from the AFDC group. (The child's income and assets are not counted if excluded from the AFDC group.) If the adoption assistance recipient is the foster child, do not count the child's income and assets when determining eligibility; however, count the child as a member of the AFDC group.

The following must be considered in order to determine need:

- a. Asset Limit and Definition

Countable assets of the AFDC group may not exceed \$10,000 during the eligibility month. Assets are defined as a "resource that a person possesses or owns." Assets must be available, which means that a member of the AFDC group owns it or has the legal right to sell it or dispose of it for the individual's own benefit. An asset is determined by its equity value, which is the current market value minus any debts still owing on the asset.

Countable Assets

Countable assets may include:

- Real property including land, houses, buildings, and trailer homes.
- Liquid assets, such as savings and checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, cash value of insurance policies, trust funds, and agreements in escrow.

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- All motor vehicles, such as cars, trucks, motorbikes, motorcycles, snowmobiles, boats, campers, and trailers.
- Instruments and tools.
- Livestock.
- Merchandise and inventory.
- Time-shares and time-share agreements.
- Certain aliens who have been legally admitted in the United States for permanent residence must have assets of their sponsors counted when determining eligibility for AFDC. Contact the Title IV-E/Medicaid Trainer for more details when a sponsor is involved.

Asset Exclusions

Exclude the following from countable assets:

- Home, its contents and surrounding property.
- Equity value of up to \$1,500 of one car or other motor vehicle. Count any value in excess of this amount towards the \$10,000.00 asset limitations.
- The equity value of a vehicle is its fair market value minus the amount owed on it. The fair market value is the average trade-in value listed in the most current Used Car Guide Book put out by the National Automobile Dealers Association (NADA). Do not add or deduct values for optional equipment or mileage. If the vehicle is not listed in the Used Care Guide Book, contact a dealer for an estimate of value.
- Per capita payments or any asset purchased with per capita payments made to tribal

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members by the Secretary of the Interior or the tribe.

- Irrevocable burial trusts. Exempt the value of an irrevocable burial trust fund such as a pre-arranged funeral plan. Exempt one burial space and any item related to repositories used for the remains of the deceased for any member of the household. This includes caskets, concrete vaults, crypts, urns, and grave markers. In addition, if a recipient owns a gravesite, the value of which includes the opening and closing, the value of these services is also excluded.
- Allow a \$1,500 burial/funeral fund exemption for each eligible AFDC group member, subtracting the value of any irrevocable burial trust from the \$1,500 burial/funeral fund exemption.
- Real property, if a household is making a bona fide effort to sell real property during the month of removal.
- Income producing personal property necessary for employment.
- Educational assistance.
- Loans, including reverse equity loans endorsed in writing for repayment.
- Lump sum insurance payments for lost, stolen, or damaged property if the available money is used to replace the lost, stolen, or damaged property, and the property was exempt at the time of loss.

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Availability of Assets

Count only assets that are available to the AFDC group. Assets are available when an individual legally owns the asset and has possession of the asset.

Joint Accounts

When a person in the AFDC group and someone who is not in the AFDC group jointly owns a bank account, count all of the funds as an asset for the person in the AFDC group if the AFDC group member can legally withdraw the funds from the account.

If one account holder is in the AFDC group and another account holder is not in the AFDC group but is in an FEP assistance household, divide the funds equally between the two households.

If the person claims that the asset does not belong to him/her, allow the individual to refute ownership. Document why the joint account was set up and who made the deposits and withdrawals from the account.

Joint Ownership of Assets

If more than one person owns property, determine the share that belongs to the person(s) in the AFDC group. Unless there is a condition of ownership specifically prohibiting the sale of any part of the asset without permission of all owners, the share that belongs to the person in the AFDC group is counted as an available asset.

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When Legal Factors Hinder the Availability of  
an Asset

When determining if an AFDC group meets the asset limit during the eligibility month, if legal factors hinder making the asset available, the asset is exempt. For example, a condition of ownership may prohibit selling the asset without the consent of both parties. In this case, the asset is exempt because legal factors hinder making the asset available.

If the cost of making the asset available exceeds its value, efforts do not have to be made to make the asset available.

3. Income

Income eligibility determination is based upon the best estimate of income, AFDC group size, and child care costs during the eligibility month, based upon available information. Past income and consideration of changes during the eligibility month should be taken into account when determining AFDC group income. Information needs to be verified. A parent's signed statement of income meets the verification requirement.

Use the household and worker's reasonable expectations and knowledge of the circumstances during the eligibility month when determining income. Document the AFDC group's earned and unearned income clearly in the case record.

Income Tests

The AFDC group must pass two income tests for the eligibility month for the initial IV-E eligibility determination.

*First Test = 185% Income Test*

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The AFDC group's countable gross income must not exceed 185% of the AFDC Need Standard. Gross countable income is total income, earned and unearned, the AFDC group received during the eligibility month plus any deemed stepparent income. Do not count excluded earned and unearned income. If the gross income is less than or equal to 185% of the AFDC Need Standard, proceed to the second income test. **If the gross income is more than 185% of the AFDC Need Standard, the foster child is not IV-E eligible.**

*Second Test = 100% Income Test*

The AFDC group's countable gross income minus allowable deductions must not exceed 100% of the AFDC Need Standard. This is determined by subtracting allowable deductions from countable earned income (not less than zero), and adding this adjusted earned income to the countable unearned income and any deemed stepparent income. Allowable deductions from earned income include:

- a. Work Allowance  
Subtract \$90.00 work expense allowance from each employed person's earnings in the household.
- b. Day Care  
Subtract the monthly cost of day care from the earned income of the member of the AFDC group paying the expense if: (1) the day care expense is for a child or an adult member of the AFDC group, and (2) the day care expense is paid to a person not included in the AFDC group. The day care expense may be deducted up to the limits as specified below:



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Child Under Age 2	\$200 per person/month
Age 2 or Over	\$175 per person/month

If the net income is less than the AFDC Need Standard, the household meets the income criteria for AFDC eligibility. **If the net income is EQUAL to OR GREATER than the AFDC Need Standard, the household does not meet the income criteria for AFDC eligibility and the foster child is not IV-E eligible.**

Deeming Stepparent Income

If a stepparent lives in the household, the stepparent's gross income must be "deemed" to the foster child. Deeming means determining the amount of the stepparent's income to be included in the total gross income available to the foster child. To determine the deemed amount:

Determine the stepparent's gross income (earned and unearned).

Determine the AFDC group size for the stepparent. The AFDC group size consists of the stepparent and any of the stepparent's biological or adoptive children who meet the dependent child criteria (living in the home, or out of the home and not receiving child support) who are not a child in common with the other spouse in the household. (The stepparent will not be counted in the AFDC group for the foster child.)

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Subtract \$90 earned income work deduction if the stepparent is working.

Subtract the 100% AFDC Need Standard amount for the stepparent's AFDC group size.

Subtract any child support/alimony the stepparent is paying.

The remaining income is the income to be deemed (added) to the child's available income. (For the 100% income test, do not deduct the \$90 earned income work deduction again.)

Lump Sum Payments as Income

Lump sum payments, such as Social Security lump sums and severance pay, are income and can be earned or unearned. Costs of legal fees expended to make the lump sum available, payments for past medical bills, and funeral or burial expenses (if the lump sum was intended to cover funeral or burial expenses) are subtracted from the lump sum before determining income eligibility.

Counting Lump Sum Payments for Initial Eligibility

A lump sum received during the eligibility month is counted as income in the month received. If the lump sum belongs to the foster child and has not been fully spent during the eligibility month, any remaining portion is an asset.

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A lump sum received prior to the eligibility month is not countable as income. Any remaining portion of the lump sum left during the eligibility month is an asset.

Do not count any lump sum payments received by an SSI recipient as either income or assets when determining if a household meets AFDC criteria.

Unearned Income

1. Countable Unearned Income

Unearned income is income received by an individual for which no service is performed.

Countable unearned income includes, but is not limited to, the following:

Pensions and annuities such as Railroad Retirement, Social Security, Veterans Administration, and Civil Service payments.

Disability benefits such as industrial compensation, sick pay or worker's compensation, mortgage insurance, and paycheck insurance.

Unemployment compensation.

Strike or union benefits.

VA allotments and GI Bill.

Child support (after \$50 deduction per household) and alimony. Child support and

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alimony payments belong to the person for whom they are intended, not the person who may be receiving payments on behalf of the individual.

Money from churches, charitable organizations, lodges, unions, friends, or relatives (except as noted under exemptions for gifts, below).

Interest and dividend payments from stocks, bonds, savings, and insurance.

Trusts, inheritances, personal injury settlements, and life insurance benefits.

Tribal fund gratuities.

JTPA needs based payments and supported service payments that are not reimbursements.

Money from sales contracts and mortgages.

Rental income, if another individual or company manages the rental property for the owner. (In these cases, the owner collects money from the manager.)

Unearned Income Exclusions

The following types of unearned income are not counted for AFDC purposes:

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Foster care payments, adoption assistance payments, or cost of care payments for a child in State custody.

All unearned in-kind income.

Income of an SSI recipient. (Do not count SSI income or any other income received by an SSI recipient.)

The first \$50.00 of current child support payments collected each month.

JTPA unearned income of a dependent child.

Travel and training allowances and reimbursement.

Educational assistance and college work study, with the exception of Veterans Educational Assistance intended for family members of the student.

Loans, including reverse equity loans, endorsed in writing for payment.

Cash gifts of up to \$30 per household member received in any one quarter. (Count the amount exceeding the \$30 limit.)

Cash to pay for shared living expenses received from a person living in the removal home who is not a member of the AFDC group.

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Income tax refunds and Earned Income Tax Credit (EITC) payments.

Payments for home energy assistance, rental subsidies, and relocation assistance.

Food programs such as Food Stamps, WIC, USDA surplus food, home delivered meals, or school lunch.

Special payments made by law, including:

Payments or reimbursements made to volunteers under the Retired Senior Volunteers Program, Green Thumb, Foster Grandparent Program, VISTA volunteers, Senior Health Aides, SCORE, Senior Companion Program, and ACE.

Payments to Japanese and Aleut people who were relocated during wartime.

Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation.

Payments made from the Radiation Exposure Compensation Act.

Payments under the Disaster Relief and Emergency Assistance Amendments of 1988.

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Certain Native American Payments

Income accrues to many Indians from leasing real property held in trust by the federal government. Such income includes payments from range unit leasing, farm leases, gravel pit contract sales, etc. Lease payments are usually deposited in and disbursed through Individual Indian Monies (IIM) Accounts, maintained by the Bureau of Indian Affairs, although they are sometimes made directly to the applicant/recipient by the lessee. Please note that the Omnibus Budget Reconciliation Act of 1993 provides that up to \$2,000 per year of income received by the individual Indians (IIM's) which is derived from leases or other uses of individually owned trust or restricted lands shall not be counted as income.

Eligibility staff must verify Individual Indian Monies (IIM) Accounts in order to determine the yearly amount and source of income deposited for exclusion purposes. Although other forms of verification are acceptable, county social service boards can best obtain information about deposits to IIM Accounts for each member of the assistance unit by use of SFN 42/413, "Individual Indian Monies Account."

Under P.L. 93-134, enacted October 19, 1973, judgment funds distributed after that date to members of Indian tribes are to be disregarded as income or assets. To remain exempt, however, per capita funds must be kept separate and apart from countable assets. Otherwise it is not possible to differentiate between funds that are exempt and funds that are not. Commingling of funds renders the entire account nonexempt.

Any proceeds from tribal gaming/gambling establishments distributed to enrolled tribal members

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(residing on or off the reservation) must be considered unearned income.

Earned Income

Countable Earned Income

Earned income is income in cash or in-kind for which a person performs a service. Sources of earned income include, but are not limited to:

Wages, salaries, bonuses, commissions, and tips, including JTPA wages of a child other than the foster child, Job Corps payments, Americorps living allowances and deemed income of a stepparent.

Sick pay and temporary disability insurance or temporary workers compensation payments, which are employer funded.

Severance pay, including the cash-out of vacation pay and sick pay.

Rental income, only if the owner to receive the income performs managerial duties.

Monies from self-employment, including earnings over a period of time for which settlement is made at one given time, such as farm crops, livestock, and poultry.

Training incentive payments and work allowances.



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Benefits received by a household member as a reward for service, such as free shelter, vendor payments, or any additional allowances given for shelter to a member of the armed forces.

Certain aliens who have been legally admitted in the United States for permanent residence must have income of their sponsors counted when determining eligibility for AFDC. Contact the Title IV-E/Medicaid Trainer for more details when a sponsor is involved.

Earned Income Exclusions

Incentive and training expenses paid under a client's plan with the Department of Workforce Services.

Reimbursements from an employer for any work expense or allowances from an employer for travel and training.

Earned Income Tax Credit (EITC) payments received as part of the regular paycheck or received as a lump sum along with the household's income tax refund.

Income paid by the U.S. Census Bureau to temporary census takers.

JTPA earned income of a dependent child.

A child's earned income who is a full-time student.

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**Concurrent Eligibility for Both Title IV-E and  
Supplemental Security Income (SSI) 447-10-20-20  
(Revised 5/15/07 ML #3087)**

[View Archives](#)

Contrary to superseded prior federal policy, it is now allowable for the same child to be simultaneously eligible for both Supplemental Security Income (SSI) and Title IV-E Foster Care or Adoption Assistance (ACYF-PA-94-02). In fact, dual SSI/IV-E eligibility is quite common and very significant to federal support for foster care and subsidized adoptions. SSI is a means-tested program for the elderly and disabled, including children with mental and physical disabilities, whether in foster care or not. Title IV-E is a means-tested program for children in foster and adoptive placements. Since both means tests are similar (both originated in the welfare programs), a disabled child in placement will often meet both means tests simultaneously.

While a child may be eligible for both SSI and IV-E simultaneously, SSI offsets any SSI payments dollar-for-dollar for any IV-E maintenance funds received by an individual child in the same month. Therefore, as a practical matter, either SSI or IV-E, but not both, may be claimed by the State to help pay for a child's foster care in a given month. Nevertheless, it is still important for IV-E eligibility to be established in every possible foster care case, even if the SSI is claimed for foster care income maintenance, because IV-E administrative funds are claimed for every IV-E eligible child. Thus, for a SSI/IV-E eligible child, the state and counties may claim both IV-E maintenance and IV-E administrative funding, or they may claim SSI maintenance and IV-E administrative funding. See Section 10-20-25-20 on selecting the source of maintenance funding for the SSI/IV-E eligible child.

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**Determining IV-E Eligibility with SSI in the Removal Household 447-10-20-20-05**

**(Revised 5/15/07 ML #3087)**

[View Archives](#)

When another member of the child's household (home of removal) is receiving SSI during the child's removal month, these SSI payments should be disregarded as income and the SSI eligible person should not be counted in the computation of the number of persons in the household.

**EXAMPLE:** A child is removed from the home of the child's disabled SSI-eligible father who receives \$500/month SSI and also earns \$200/month, the child's stepmother, and her two other children. The stepmother is employed part time and earned \$300 per month. For the IV-E means test, the removal household of five persons (counting the child removed) is treated as a household of four; one adult and three children, since the SSI eligible parent is not counted. Father and his income, both earned and unearned, are excluded, leaving countable household income of \$300/month. This case would meet both the AFDC deprivation (absent mother and disabled parent) and the means tests.

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**SSI Children Entering Foster Care 447-10-20-20-10**  
**(Revised 11/1/10 ML #3249)**

[View Archives](#)

Some children are already recipients of SSI when they enter foster care. It is critical, and it is North Dakota policy, that such children must be thoroughly evaluated for IV-E eligibility. Receipt of SSI payments alone never makes a child ineligible for IV-E, regardless of the SSI amount received.

In some instances a parent or a disabled child may receive SSI while the remaining members of the family receive AFDC. To comply with federal law, an SSI recipient shall not be regarded as a member of the assistance unit for purposes of computing the AFDC grant. Consequently, assets and/or income which are owned solely by the SSI recipient, including that portion of income which is disregarded by the Social Security Administration in determining SSI entitlement, may not be considered available to the AFDC family. Similarly, income, which is earmarked for members of the AFDC unit, including income earned by the eligible AFDC caretaker, must be applied against the family's needs with no portion of such income being "deemed" to the SSI recipient. However, income, liquid assets, and/or real and personal property owned jointly by the SSI recipient and AFDC applicant/recipient are to be apportioned equally on a 50-50 basis between the SSI and AFDC units, unless otherwise indicated.

**NOTE:** RSDI, SSA, and SSDI payments are computed as income to the family in determining IV-E eligibility. SSI is not to be confused with RSDI, which is Retirement, Survivors', and Disability Insurance administered by the Social Security Administration. RSDI is sometimes referred to as SSA (Social Security Administration payments) or SSDI (Social Security Disability Insurance payments). These are non-means-tested benefits paid to adults and children as survivors or dependents

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of a deceased or disabled person who has paid into the Social Security Trust Fund.

SSI payment receipt does not disqualify a child for IV-E. On the contrary, SSI eligibility is a good indicator (although not a guarantee) that a child entering care will meet the means test for IV-E eligibility during the removal month, since that child has previously passed the similar SSI means test. To be IV-E eligible, of course, the home of removal must still, during the petition month, meet the AFDC means test and deprivation test, plus the IV-E legal status test and judicial language test.

When an SSI child enters foster care, the agency must apply to become the SSI Representative Payee for the child and must then elect either to receive the SSI payment or claim IV-E funds for the cost of the child's care. (See 447-10-20-20-20.)

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**Foster Children Becoming SSI Recipients  
447-10-20-20-15**

**(Revised 11/1/10 ML #3249)**

[View Archives](#)

North Dakota policy is that its social services staff shall encourage and assist all children entering or in foster care, their families and their caretakers, to be aware of children's right to apply for SSI benefits, and to encourage and assist them in doing so as appropriate. In particular, any child who is known to have a physical or mental impairment, including severe emotional disorders, should be encouraged and assisted to apply for SSI benefits as soon as possible. This policy applies regardless whether or not the child is eligible for Title IV-E. First and most important, this is in the child's best interest, since SSI benefits would assist in meeting the child's need for care and services both during and after foster care. Second, SSI benefits might partially offset the state's cost for foster care during the child's placement.

When a foster child who is already eligible for Title IV-E becomes eligible for SSI as well, the county agency must apply to become the SSI Representative Payee for the child and must then elect either to receive the SSI payment or to claim IV-E funds for the cost of the child's foster care (See 447-10-20-20-20).

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**Agency Stewardship as the SSI/SSDS Representative  
Payee 447-10-20-20-20**

**(Revised 6/1/07 ML #3090)**

[View Archives](#)

North Dakota policy is that the county agency responsible for a child in care who is or becomes an SSI/SSDS recipient shall apply to the Social Security Administration (SSA) to become the Representative payee for the child's SSI/SSDS payments during the time the child is in placement. SSI/SSDS payments for the child are then received by the county agency and applied to the cost of the child's care; including irregular care costs; any amounts not expended for such care are to be placed in trust for the child. Upon the child's return home, a representative payee who is no longer serving as a payee must turn over any conserved benefits, savings, or other investments and any interest earned on the benefits to SSA. SSA will reissue the returned benefits to either a new representative payee or to a beneficiary currently receiving direct payment. The Social Security Administration requires periodic reports of such Representative Payee stewardship.

In the case of children who are both SSI and IV-E eligible, an important part of this agency stewardship is determining which federal funding source to elect for the foster care income maintenance costs. The point of electing IV-E payments over SSI is that the net federal return from Title IV-E may in some cases be substantially higher than from SSI, or vice versa. Such an election is possible because, on request of the Representative Payee, the Social Security Administration will suspend SSI payments temporarily and reinstate them on request of the agency.

**NOTE** that if SSI payments are suspended past the annual SSI review/renewal date, resumption of SSI payments may require a redetermination or review.



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**NOTE** also that suspended SSI payments are permanently lost to the child or agency, not merely delayed or “banked.”

The first and primary concern of the Representative Payee in this decision must always be the interests of the child. SSI should not be suspended if (a) the SSI payments are significantly greater than the cost of the child’s foster care and the child’s appropriate access to the difference would be impaired; (b) the foster care placement is expected to be very short term and reinstating SSI payments would disrupt the child’s support; or (c) for any reason it is known that suspending SSI payments would jeopardize future eligibility for such benefits by the child.

However, when the costs of the child’s care are substantially higher than the SSI payment amount, the child’s SSI payments would be fully absorbed by the care anyhow. In such cases, the agency should also consider the fiscal interest of the state in electing IV-E in lieu of SSI payments, i.e., suspending the SSI payments and claiming IV-E. As a rule of thumb, whenever the cost of care is double the child’s monthly SSI payment, it will always be in the State’s fiscal interest to suspend SSI and claim IV-E. (In 1999, the IV-E income maintenance federal share is about 70%, so that it is currently in the state’s fiscal interest to claim IV-E whenever the cost of care equals more than 170% of the SSI payment.)

**EXAMPLE 1:** A disabled child in residential care receives monthly SSI of \$552. The cost of care for this child is \$1500 per month, which the state partially offsets with the \$552 SSI received as Representative Payee. It is in the fiscal interest of the state to suspend the SSI and claim IV-E income maintenance instead, which will bring  $\$1500 \times 70\% = \$1050$  per month federal to the state – twice as much as the \$552 SSI.

**EXAMPLE 2:** A disabled child in foster care receives monthly SSI of \$552. The child’s therapeutic foster care costs the state

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\$600 per month. It is in the state's interest to retain the \$552 SSI, since IV-E would bring less:  $\$600 \times 70\% = \$420$ .

**EXAMPLE 3:** A disabled child in foster care receives monthly SSI of \$552.00. The child's family foster care costs the state \$357.74 per month. The cost of care is less than the SSI, therefore, we would want to continue the SSI for the child. The agency would need to apply to become the payee for the SSI and each month submit the care cost of \$357.74 to the state. The remaining balance of \$194.26 would then be put into an established savings account for the child. In this same instance, \$100.00 child care costs are also being paid for as an irregular expense. \$100.00 would be sent into the state for reimbursement of this expense and the remaining balance of \$94.26 would be deposited into the child's savings account.

Even where the federal claim is only marginally above the SSI amount, the IV-E election may be wise. Placements of disabled children are more frequently longer-term than others, and the cumulative state costs of making the "wrong" IV-E versus SSI election can be enormous over time. Given the potential fiscal consequences, county staff should seek supervisory or state office guidance where judgments on this election seem particularly difficult.

**NOTE** that regardless whether SSI or IV-E is claimed for the foster care cost, IV-E administration will be claimed for this case. This is accomplished by counting such a case either as a IV-E reimbursable case (FM), or as one which is IV-E eligible but not IV-E reimbursable (FN) for the months in which SSI is claimed.

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**Reimbursability 447-10-25**  
**(Revised 11/1/10 ML #3249)**

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Once eligibility is established, the Eligibility Specialist must determine, whether the child's care was reimbursable by the federal government. Reimbursability requires that a series of conditions be met in order for foster care payments to be reimbursable. Non-reimbursability does not affect eligibility, nor does it mean that reimbursability cannot be established for the following month or for later months. There are seven reimbursability criteria. They are:

1. Legal Responsibility
2. Court certification of "reasonable efforts"
3. Not in receipt of TANF or Supplemental Security Income (SSI)
4. Reimbursable placement (the foster home must have a "full" license – not provisional)
5. Need
6. Deprivation pertains to either parent for any of the following:
  - Absence
  - Death
  - Physical/mental disability
  - Unemployment/ under employment
7. Under 18 or a child between the ages of 18 and 19 in secondary school or training full time, and expected to graduate or complete training before turning age 19.

Not all the criteria will apply to all children, nor will all the criteria apply in any one-month. In fact, the first three criteria are largely one-time tests. That is, once the criteria have been verified, there is no need to check them again. Other criteria are only checked at specific points in a child's life, e.g., the under 18 criteria.

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**Legal Responsibility 447-10-25-05**  
**(Revised 5/15/07 ML #3087)**

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**Applies to all children in Foster Care.**

There must be a court order that gives a public agency legal responsibility for the custody and placement of the child. From the date of this court order the child becomes reimbursable (assuming the other criteria have been met).

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**Reasonable Efforts - Requirements 447-10-25-10  
(Revised 11/1/10 ML #3249)**

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Federal child welfare requirements and North Dakota law requires “reasonable efforts” findings: to prevent the removal of the child from the home (or reasonable efforts were not required such as in the case of aggravated circumstances), to place siblings together and/or maintain family connections, and to make and finalize a permanent plan for the child.

Removal of a child from the child’s home for placement in foster care must be based on judicial findings stated in the court’s order, and determined on a case-by-case basis in a manner that complies with the requirements of Titles IV-B and IV-E of the Social Security Act [42 U.S.C. 620, et seq., and 42 U.S.C. 6701, et seq.], as amended, and federal regulations adopted thereunder. These regulations require that the initial court order and subsequent court reviews document the agency’s reasonable efforts as described above.

Reasonable efforts to place a child for adoption, with a fit and willing relative or other appropriate individual as a legal guardian, or in another planned permanent living arrangement, may be made concurrently with reasonable efforts to return the child safely to the child’s home. In fact, sometimes timely permanent placement cannot be achieved unless concurrent planning occurs, and only concurrent planning can avoid inappropriate extension of the child’s unsettled status. In these situations, concurrent planning is not an option, but a mandate for the agency.

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**Reasonable Efforts - Exceptions to Requirements  
447-10-25-10-05**

**(Revised 11/1/10 ML #3249)**

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Reasonable efforts to prevent removal or return a child home are not required if a judicial determination is obtained that such efforts are not required because:

1. Certain felonies have been committed against the child or another child of the parent,
2. The parent has previously had parental rights to another child involuntarily terminated, or
3. When "aggravated circumstances" are present, as specified and defined by state law.

The regulations repeat the suggested federal statutory language for aggravated circumstances: abandonment, torture, chronic abuse, and sexual abuse.

When children are removed in emergency situations, the court must consider whether appropriate services were or should have been provided. When the court determines that it was reasonable for the agency to make no effort to provide services to prevent removal (or to return the child home) as a result of emergency circumstances, such as the safety or protection of the child, there must be a judicial determination to the effect that efforts to prevent removal or reunify the family **have not been made due to the immediate danger to the child or that efforts were not possible due to the emergency situation.**

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**Reasonable Efforts - Preventing Placement  
447-10-25-10-10**

**(Revised 11/1/10 ML #3249)**

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Part of the permanency planning philosophy includes the premise that every effort will be made to prevent the placement as well as developing and maintaining adequate care plans once the child is in care. The decision to place a child outside their home is a monumental one, which should be made only with the greatest care and deliberation. It damages whatever continuity the child has experienced and introduces new emotional risks.

The agency shall provide a range of services and commit its resources to preserve the child's family and prevent inappropriate placements. The agency shall ensure that placement is arranged only after services to improve conditions that may necessitate placement have been provided and failed, or offered and refused; and when there is a clear danger to the physical and emotional well being of the child. These requirements are based upon federal law found in Parts IV-B and IV-E of the Social Security Act.

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**Reasonable Efforts - Preventing Placement -  
Documentation 447-10-25-10-15**

**(Revised 5/15/07 ML #3087)**

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Whenever a child is removed from the home, federal regulations require a judicial determination whether reasonable efforts to prevent placement were made. This reasonable effort determination must appear in the court's removal.

To support this judicial determination and to document reasonable efforts to prevent placement, the agency must organize and maintain its documentation of such reasonable efforts. This documentation includes:

1. Any case plan, treatment plan, or permanency plan, which describes efforts to prevent placement.
2. Any other evidence of Family Preservation Services planned and/or provided.
3. Authorizations or reports of other services provided to the parent or child.

The agency must provide this evidence of reasonable efforts to prevent placement to the court for the first placement hearing, and must seek to assure that the court record reflect the judicial finding with respect to such reasonable efforts.

Note that when the court makes a finding that reasonable efforts are not required, a permanency hearing in court must be held within 30 days of this determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the reasonable efforts determination was made.



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**Permanency Hearing 447-10-25-10-20**  
**(Revised 11/1/10 ML #3249)**

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**Every child in foster care must have a “permanency hearing” within 12 months of the child/youth entry to foster care or continuing in foster care following a previous permanency hearing.** The hearing must be held in a juvenile court or tribal court of competent jurisdiction (these replace the former dispositional hearings), or as an option, by the Division of Juvenile Services (DJS) for youth under its custody as a placement hearing under N.D.C.C. § 27-21.

**A judicial determination that the agency has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care, and at least once every twelve months thereafter while the child is in foster care. The requirement for subsequent permanency hearings applies to all children, including children placed in a permanent foster home or a preadoptive home.**

In addition, a permanency hearing in the court or DJS must be conducted within thirty (30) days after a court determines that reasonable efforts are not required because:

1. Certain felonies have been committed against the child or another Child of the parent,
2. The parent has previously had parental rights to another child involuntarily terminated, or
3. When “aggravated circumstances” are present, as specified and defined by state law.

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The regulations repeat the suggested federal statutory language for aggravated circumstances: abandonment, torture, chronic abuse, and sexual abuse.

The hearing shall determine the court-approved permanency plan for the child that determines, if applicable, when:

1. The child will be returned to the parent;
2. The child will be placed with a relative;
3. The child will be placed with a legal guardian;
4. The legal custodian (or State) will petition for termination of parental rights;
5. The child will be placed for adoption; or
6. The child will be placed in another planned permanent living arrangement. This applies in cases where the legal custodian has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption with a fit and willing relative or with a legal guardian.

The hearing shall also determine:

1. Whether and, if applicable, to place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that the joint placement would be contrary to the safety or well-being of any of the siblings.
2. Whether and, if applicable, in the case of siblings removed from their home who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is determined to be contrary to the safety or well-being of any of the siblings.
3. Whether an out-of-state placement continues to be appropriate and in the best interest of the child; and
4. In the case of a child who has reached age 16, the services needed to assist the child to make the transition from foster care to independent living.

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**Federal Regulations changed effective March 27, 2000, related to children in long-term care with a specified caregiver.** It is no longer acceptable for a court to name a specific foster home in the court order. Placement and care responsibilities must rest with the agency, or foster care payment cannot be made. The requirement for 12-month permanency hearings (formerly dispositional hearings), now applies to ALL children in foster care.

Paper reviews, ex parte hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and the foster parents or pre-adoptive parent (if any) are not permanency hearings.

Continued Court Orders:

When findings of reasonable efforts to finalize the child's permanent plan are negative, insufficient or missing, foster care payments cannot be made until there is a positive finding. Continuances of the permanency hearing date and extension of the current court order which may delay the 'finding' of the permanency hearing until after the twelfth month will not meet the requirements of IV-E reimbursability. The required finding must be made every 12 months while the child is in care from the time the child is considered to have entered foster care. Foster care payments will terminate on the last day of the calendar month in which the findings were due. Once permanency findings are issued by the court, payments may be reinstated back to the first day of the calendar month in which the findings are made.

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**Alternative Permanency Placements  
447-10-25-10-20-05**

**(Revised 5/15/07 ML #3087)**

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The Adoption and Safe Families Act (ASFA) regulations effective March 27, 2000, require a significant change in practice related to long-term foster care. The changes are consistent with discouraging the use of long-term foster care, and the preference for another permanency arrangement for the child such as adoption or guardianship. Throughout the new federal regulations related to ASFA, you will note references to "another planned permanent living arrangement," and few, if any, references to long-term foster care.

The requirement for the 12-month permanency hearing (and every 12 months thereafter) applies to the child "in another planned permanent living arrangement."

**Children entering "another planned permanency living arrangement":**

When other options such as reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative have been ruled out, and it is concluded that "another planned permanent living arrangement" is the most appropriate plan for the child, the agency must document to the court the compelling reason for the alternate plan.

The child's case plan along with the "compelling reasons" document must be available to the court for review during the next permanency hearing.

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**Permanency Planning Requirements:**

The quarterly permanency planning reviews now apply to all children in foster care, including those in “another planned permanent living arrangement”. This will ensure that the placement is reviewed and the case plan kept up-to-date for the court’s yearly review at the 12 month (or sooner) permanency planning.

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**Specified Caregiver 447-10-25-10-20-10**  
**(Revised 5/15/07 ML #3087)**

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The Supplementary Information to the federal regulations issued January 25, 2000, clarifies that it is not permissible for courts to extend their responsibilities to include ordering a child's placement with a specific foster care provider. The child's placement and care responsibility must be with a public agency (the State agency or another public agency with whom the State agency has an agreement).

Once a court has ordered a placement with a specific provider, it has assumed the State agency's placement responsibility.

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**Concurrent Receipt of TANF and Title IV-E  
447-10-25-15**

**(Revised 5/15/07 ML #3087)**

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There is no prohibition in the Title IV-E program against the concurrent payment of TANF and Title IV-E benefits on behalf of the same child.

The purpose of Title IV-E foster care payments is to provide for the maintenance of TANF-eligible children in foster care when they cannot remain in their own homes. The Title IV-E payment to the foster parents or child care institution to provide for the child's needs is made in lieu of the TANF payment to the family from which the child has been removed. Title IV-E may begin from the first day of placement in the month in which all eligibility criteria are met, regardless of whether a TANF payment has been made on the child's behalf for that same month.

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**Reimbursable Facility 447-10-25-20**  
**(Revised 11/1/10 ML #3249)**

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**Applies to all children in foster care.**

A foster care payment can be made only to an authorized foster care provider. There are three types of providers who meet the law's definition of a reimbursable facility:

1. A licensed or affidavit foster family home, not a provisional license;
2. A private, non-profit or for-profit, non-medical group home or residential child care facility licensed by the state;
3. A public non-medical group home or institution, which is licensed for no more than 25 children.



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**Need 447-10-25-25**  
**(Revised 5/15/07 ML #3087)**

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To maintain reimbursability the child must have a financial need in AFDC terms. Need has two elements. First, the income available to the child must be less than the costs of maintaining the child. Income available includes all forms of income the child receives. Income is the gain or benefit, earned or unearned, derived from labor, business, capital, or property, which is received or is available to the assistance unit. It is considered when actually available when the applicant has a legal interest in a liquidated sum and has the legal ability to make such sum available for support or maintenance. So all unearned income would be considered available to the child, while earned income would only be partially available since the AFDC rules allow disregards for work expenses and for earnings of employed students in accordance with Service Chapter 400-15-10. The cost of maintaining the child is the amount the state is paying for the foster care placement of the child. In any month where the child's income after deductions exceeds this amount, the child is not reimbursable.

The earnings of a part-time student employed part-time are counted in the eligibility test in the initial month only. All other earnings of a dependent child who is a full-time student or a part-time student not employed full-time are exempt.

The second element of need is a child's assets. If a child's assets exceed \$10,000 in non-exempt assets in any month the child is not reimbursable.

At re-determination, a child in foster care is considered his/her own assistance unit and financial need is determined based on income and assets available to the child. In establishing the initial eligibility, the income and assets of the child's parent(s) would have been

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considered if the child lived with either parent in the eligibility month. In the test of need in a reimbursability determination, the income and assets of the child's parents are not to be considered. The income test against the State need standard is applicable to the child's available income at all times throughout the foster care episode.

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**AFDC Deprivation 447-10-25-30**  
**(Revised 5/15/07 ML #3087)**

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**Applies to Title IV-E eligible children only.**

A child in foster care must continue to meet one of the AFDC deprivation factors in order to maintain Title IV-E reimbursability. In the foster care context this means that if the child were to be returned to the home from which he or she was removed, deprivation would exist in that home. As with the eligibility determination this means that one or both parents is absent from the home, or physically or mentally disabled, or that the principal wage-earning parent is unemployed or under employed. The "home" considered in the reimbursability deprivation test is the home from which the child was removed in the eligibility test. A child was removed from the home of a relative other than the parents, it is this home, which is considered in establishing reimbursability, and the deprivation factor is permanent absence. However, the deprivation factor of absence would no longer apply if the parents move in with this relative.

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**Under the Age of 18 or 19 if in School 447-10-25-35**  
**(Revised 5/15/07 ML #3087)**

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(Applies to all children.)

A child loses Title IV-E eligibility and reimbursability when the child reaches the age of 18, unless the child is enrolled full-time in high school or an equivalent course of study and can reasonably be expected to graduate prior to the child's nineteenth birthday. If the child meets this exception, reimbursement may continue until the child graduates or turns 19, whichever occurs first.

When the child turns 18, they need to sign the "Understanding of the Parties for Continued Foster Care Services," SFN 1781, to give the agency the authority to continue to provide services and authorize payment for the child, unless there is a valid court order in effect from DJS.

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**Other Factors 447-10-30**

**Role of DJS 447-10-30-05**  
**(Revised 5/15/07 ML #3087)**

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The Division of Juvenile Services (DJS) is responsible to provide the county eligibility staff with all individual and family information (including copies of court orders, income, assets, determination of deprivation and other AFDC related requirements) regarding a child as soon as an application is made for foster care maintenance payments so a proper determination of Title IV-E eligibility may be made. It is not the responsibility of the eligibility staff to secure all Title IV-E eligibility documentation. That is the responsibility of DJS. The eligibility staff determines eligibility, but DJS must provide the necessary documentation.

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**Case Plan 447-10-30-10**  
**(Revised 11/1/10 ML #3249)**  
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**Applies to all children in Foster Care.**

As a condition of receipt of federal financial participation, social service personnel or personnel of a public agency which has a currently effective agreement with the Department of Human Services for providing such services must develop and maintain a case plan.

(See Service Chapter 624-05-15-50)

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**Child's Income and Assets 447-10-30-15**  
**(Revised 5/15/07 ML #3087)**

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Children's earned and unearned income and assets must be evaluated very closely. The basic principal is that the payment to the foster parents should be made by the state. If the child has income, or assets in excess of \$10,000\*, the County should use these funds to reimburse the state for the child's cost of care. The child may continue to be entitled to a State foster care payment, even if the child's countable assets exceed \$10,000, as long as the County reimburses the State for the amount of the payment. This is only applicable to on-going foster care cases, in which the child's assets have built up in excess of the \$10,000. For an initial foster care case, if the assets are over \$10,000 there is no eligibility for foster care payment until spend down of assets has occurred.

The steps involved in determining how to handle the child's income or excess assets are presented below. In all cases the payment to the foster home is made by the State.

1. Does the child have countable income?

No: Go to B.

Yes: Yes: Is the child's income greater than the cost of the child's care?

Yes: The County reimburses the State for the amount the State paid. The excess income is put in an account for the child.

No: The County reimburses the State with the child's entire income. Go to B.

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2. Does the child have assets?

No: Stop, no additional action needs to be taken.

Yes: Are the child's assets greater than \$10,000?

No: Stop, no additional action needs to be taken.

Yes: The funds from the child's account in excess of \$10,000 must be used to reimburse the State for the child's cost of care.

Example:

- a. The child is in a Family Foster Home. His cost of care is \$425 per month. His income is \$500.

The State pays the foster parents \$425. The County reimburses the State the full \$425. The balance of the child's income -- \$75 is placed in an account for the child.

The situation continues for two years. At the end of this two-year period, the child has \$10,800 in his account. The State continues to make the payment to the foster parents even though there is more than \$10,000 in the child's account, as long as the County continues to reimburse the State for the child's cost of care.

- b. The same child moves to a group home where his cost of care is \$800. His income continues to be \$500 per month. When the child is placed in the group home the amount in his account is \$10,800.

The State pays the group home \$800. The County reimburses the State with the child's income of \$500, plus \$300 from the child's account each month until the



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balance in the child's account is \$10,000. That is, in each of the first two months the child is in this home the County will send \$300 from his account. In the third month, the County will send \$200 from this account. Beginning in the fourth month, the County will only send the child's income.

\* Federal law change 12/14/1999

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**Tribal Agreements Regarding Title IV-E Payments  
447-10-35**

**(Revised 5/15/07 ML #3087)**

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The North Dakota Department of Human Services has entered into formal agreements with interested Indian tribes pertaining to Title IV-E (AFDC related) foster care eligibility. The agreements allow the tribe or tribal court to retain jurisdiction including placement and care responsibilities of children and still have Title IV-E foster care eligibility for a child if all other Title IV-E foster care eligibility requirements are met.

The North Dakota Department of Human Services has agreements with the following tribes:

- Spirit Lake Sioux Nation (formerly Devils Lake Sioux Tribe)
- Standing Rock Sioux Tribe
- Three Affiliated Tribes (Fort Berthold)
- Turtle Mountain Band of Chippewa Indians

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**Native American Parents Living on an Indian  
Reservation when the Child Enters Foster Care  
447-10-40**

**Jurisdictional Limitations - County Social Service  
Board 447-10-40-05**

**(Revised 5/15/07 ML #3087)**

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On the federal Indian reservations, the role of the county social service board must fall within judicial and jurisdictional limitations. The state recognizes a government-to-government relationship with the tribes.

The role of the county social service board is limited because the state has neither criminal nor civil jurisdiction over Native American children.

The tribe has the right to set their own foster home licensing standards. The state will accept an affidavit of compliance with the tribal licensing standards. The standards must be reasonably in accord with a national licensing standard, be adopted by formal tribal resolution, and submitted to the Department along with a copy of the standards.

Tribes may only receive title IV-E funds pursuant to a title IV-E agreement with a State. A Tribe that enters into such an agreement must comport with section 471(a)(20) of the Act and section 1356.30 in accordance with the State plan in order to receive title IV-E funding on behalf of children placed in the homes it approves. The Tribe must provide documentation that criminal records checks have been conducted with respect to prospective foster and adoptive parents.

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The background check consists of the following:

1. Completion of "Personal Authorization for Criminal Record Inquiry," SFN 838, for each adult in the prospective foster home.
2. Completion of "Background Check Address Disclosure," SFN 377, for each adult in the prospective foster home.
3. Completion of two fingerprinting cards, if required.

In the absence of unique tribal foster care licensing standards, the state will accept an affidavit (signed by a tribal official) that the home meets state licensing standards.

State law applies to non-Indian persons on Indian reservations, including the requirement for licensing foster homes in accordance with state law and rules for the care of any foster child.

By tribal resolution, press release, and otherwise, Native American people have made known a concern over the removal or possible removal of Native American children from the reservation to a non-Indian culture off the reservation. This concern is to be recognized and respected. Therefore, with reference to Native American children living on a federal Indian reservation, representatives of the Department of Human Services and county government will not be involved in the removal of any Indian child from the child's parents or the placement of the Indian child off the reservation. The county may respond to the Tribal Court in terms of social information or recommendations. In keeping with this concept, the county social service board is not to accept legal custody of a Native American child unless the appropriate court has first determined the child is to live and be cared for off the reservation.

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**Financial Responsibility of Foster Child Under the  
Custody of the Tribe 447-10-40-10**

**Title IV-E - Role of County Social Service Board  
447-10-40-10-05**

**(Revised 6/1/11 ML #3271)**

[View Archives](#)

All applications for Title IV-E foster care maintenance payments must be initiated by tribal representatives and processed by county social services. Those eligible for Title IV-E are entitled to foster care payments through the Department of Human Services whether the placement is on or off the reservation. A new application for foster care must be received by the financial county within 30 days of a foster care placement. In the case of Title IV-E children under the custody of tribal social services, this refers to a foster care paid placement.

For Title IV-E eligibility, certain conditions must be met, such as appropriate court orders as well as on-going permanency planning. One of these requirements is that "placement and care" authority must rest with the Tribal agency. All other conditions related to the court order and federal Title IV-E laws and regulations must be applied. Information on permanency planning requirements is spelled out in Service Chapter 624-05.

The county social service board is responsible to provide full cooperation and assist the tribe in securing necessary individual and family information so that all potentially eligible children are properly determined to be eligible.

If a child is determined to be non-Title IV-E eligible, the county shall advise the tribe as to the reasons and what, if anything, can be done

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to make the child eligible and reimbursable. If the child is non-Title IV-E eligible, financial responsibility for foster care payment remains with the Tribe.

Tribal Title IV-E cases must be closed in FRAME within 30 days from the date the county has determined that the child is no longer Title IV-E eligible or reimbursable.

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**Title IV-E - Role of the Tribe 447-10-40-10-10**  
**(Revised 6/1/11 ML #3271)**

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The tribe is responsible to provide the county eligibility staff with all individual and family information (including copies of court orders, assets, determination of deprivation and other AFDC related requirements) regarding a child as soon as an application is made for foster care maintenance payments so a proper determination of Title IV-E eligibility may be made. It is not the responsibility of the eligibility staff to secure all Title IV-E eligibility documentation. That is the responsibility of the tribe. The eligibility staff determines eligibility, but the tribe must provide the necessary documentation. A new application for foster care must be received by the financial county within 30 days of a foster care placement. In the case of Title IV-E children under the custody of tribal social services, this refers to a foster care paid placement.

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**Title IV-E - Role of DHS/CFS 447-10-40-10-15  
(Revised 5/15/07 ML #3087)**

[View Archives](#)

Maintenance payments for the care of children who are Title IV-E eligible and reimbursable are a state and federal financial responsibility. The proper matching symbol code to use for eligible children is NA.

**Note:** This is limited to payment for children whose parent caretaker was living on a federal reservation at the time the child entered foster care, whether the child is placed on or off the reservation.

One hundred percent (100%) state and federal financial responsibility is based on where the parent(s) of the Native American child were living at the time the petition was filed that led to the removal of the child and is limited to the following counties of "financial responsibility":

Benson	Mercer
Dunn	Mountrail
Eddy	Rolette
McKenzie	Sargent
McLean	Sioux



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**Native American Foster Child is Under Custody of DJS  
447-10-40-15**

**Role of County Social Service Board 477-10-40-15-05  
(Revised 5/15/07 ML #3087)**

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The county social service board is responsible to make all foster care payment financial arrangements and determinations of eligibility for any foster child under the legal custody of the Division of Juvenile Services in accordance with NDDHS Service Manual Chapters 447-10 and 623-05. All efforts should be made to secure Title IV-E eligibility.

For children who are Title IV-E eligible, the proper matching symbol code is NA.

For children who are not Title IV-E eligible, the proper matching symbol code is NR. This applies to children under the custody of the Division of Juvenile Services only.

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**Role of DHS/CFS 447-10-40-15-10**  
**(Revised 5/15/07 ML #3087)**  
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Financial responsibility for foster care maintenance payments shall be 100% federal and state.

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**Native American Parents Living Off an Indian  
Reservation When the child Enters Foster Care  
447-10-45**

**Financial Responsibility 447-10-45-05  
(Revised 5/15/07 ML #3087)**

[View Archives](#)

There are no special provisions for financial responsibility for a Native American child who enters foster care when his/her primary caretaker parent(s) is living off the reservation.

The county is responsible to determine foster care eligibility the same as for any other child. The custodian is responsible to provide all individual and family information to the eligibility staff so proper foster care eligibility can be determined. Financial responsibility is shared between federal, state, and county governments based on eligibility.

There is no NA or NR matching symbol within this category.

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**Alien Eligibility for Title IV-E 477-10-50  
(Revised 5/15/07 ML #3087)**

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(Applies to All Children in Foster Care)

Effective August 22, 1996, with the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Congress requires that States verify United States citizenship or qualified alien status of persons who are recipients of certain public benefits, which include Title IV-E federal foster care (income maintenance), adoption assistance, and independent living payments. Citizenship or qualified alien status is not required for a child to receive child welfare services or child protective services, even though funded under Title IV-B or IV-E Administration, since such protective services do not meet the law's definition of "public benefits." Current federal guidance is found in ACYF-CB-PIQ-99-01 and in Attorney General Order No. 2129-97, "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 63 Fed. Reg. 61344 (Nov. 17, 1997).

Note that this supersedes prior federal law and policy, as well as North Dakota practice, which allowed Title IV-E foster care and adoption assistance payments for resident alien children who otherwise would not have been eligible for Aid to Families with Dependent Children. **Now Title IV-E eligibility for income maintenance, adoption assistance, or independent living payments requires U.S. citizenship or Qualified Alien status, which excludes certain aliens such as undocumented aliens or aliens legally admitted on a temporary basis for work, study, or pleasure.**

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The U.S. Citizenship requirement is met if an individual is one of the following:

- A person (other than the child of a foreign diplomat) born in one of the States or in the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands who has not renounced or otherwise lost his or her citizenship;
- A person born outside of the United States to at least one U.S. Citizen parent (sometimes referred to as "derivative citizen");
- A naturalized U.S. citizen; or
- A U.S. non-citizen national, a person born in American Samoa or Swain's Island on or after the date the U.S. acquired them, or a person whose parents are U.S. non-citizen nationals (subject to certain residency requirements).

A "Qualified Alien" is a person who, at the time of application, is:

1. An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act;
2. An alien granted asylum under section 208 of such Act;
3. A refugee admitted to the U.S. under section 207 of such Act;
4. An alien who is paroled into the U.S. under section 212(d)(5) of such Act for a period of at least one year;
5. An alien whose deportation is being withheld under section 243(h) of such Act, as in effect immediately before April 1, 1997, or section 241(b)(3) of such Act;
6. An alien who is granted conditional entry pursuant to section 203(a)(7) as in effect prior to April 1, 1980;
7. An alien who is a Cuban or Haitian entrant (as defined in section 501(3) of the Refugee Education Assistance act of 1980); or
8. An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the U.S. (See Exhibit B to Attachment 5 of the Department of Justice Interim Guidance, 62 fed. Reg. 61344 (Nov. 17, 1997) for the requirements

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that must be met for an alien to fall within this category of qualified alien).

Because of the complexity of rules regarding citizenship and alien status, staff are urged to seek supervisory and Departmental expert advice when addressing questions that may arise as to these issues.

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**Verifying Citizenship or Qualified Alien Status for Foster Care, Adoption Assistance, and Independent Living Payments 447-10-50-05**

**(Revised 5/15/07 ML #3087)**

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The law regarding U.S. citizenship and nationality is complex.

Because the process of verifying an individual's status as a U.S. citizen, U.S. non-citizen national, or qualified alien raises significant issues involving privacy and anti-discrimination protections, federal guidance is that no verification of an applicant's status in this regard should be undertaken where benefits are not contingent on such status. Therefore, whenever there are indications that the child is not likely to be foster care eligible for other reasons, citizenship/qualified alien verification should not be pursued.

A child must be either a United States citizen by birth or naturalization, or must be a qualified alien. U.S. citizenship follows that of the child's U.S. citizen parent(s) or is established by being born in this country. Children who are in the U.S. under a visitor or tourist visa or under a student arrangement are not eligible for foster care.

Qualified alien status must be verified through the Immigration and Naturalization Services verification process utilizing the information on the Alien Registration Card designated as I-94.

The procedures to be followed for determination of citizenship/qualified alien status during the initial Title IV-E eligibility process are as follows:

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STEP 1:	Request that the parent or the child's representative complete SFN 641 indicating that the child is a U.S. citizen or an alien, and sign the form under penalty of perjury. File this completed form in the child's eligibility record.
STEP 2:	Request that the parent or child's representative provide evidence of the child's citizenship, e.g., a copy of the child's birth certificate, hospital birth record, U.S. consular report of birth, U.S. passport, a Certificate of Citizenship, or a Certificate of Naturalization. Keep a photocopy of such evidence in the child's eligibility record.
STEP 3:	If the child is an alien, request that the parent or child's representative provide a copy of a current document issued by the U.S. Immigration and Naturalization Services (INS), such as Form I-551, I-94, I-688B, or I-766. Contact the INS to verify that the immigration status is current and that it indicates citizenship or qualified alien status. Eligibility staff can verify citizenship or alien status by using the Verification of Citizenship or Alien Status – Systematic Alien Verification for Entitlements (SAVE) in accordance with Service chapter 449-05-25. Record the INS response in the child's eligibility record.
STEP 4:	If the child is otherwise Title IV-E eligible and reimbursable, but does not meet the citizenship/qualified alien test, note this fact at the bottom (end) of SFN 870. Also, record the citizenship status of the child and family members on SFN 641 where indicated.



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## **Procedures 447-10-55**

### **Initial Eligibility 447-10-55-05 (Revised 5/15/07 ML #3087)**

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The eligibility determination process begins with the Social Worker who is responsible for completing the Placement Notification and Preliminary Eligibility Determination form, SFN 630, for all children who enter care. This form along with a copy of the removal court order and the petition, which resulted in the removal, are sent to the eligibility staff. Title IV-E eligibility determination is based on the July 16, 1996, AFDC rules.

Depending on individual county procedures, the eligibility staff or social worker/case manager will send a Title IV-E/Title XIX SFN 641 application to the child's parents, or guardian. If the parents do not complete and return the application, the Social Worker/Case Manager will be asked to follow-up with the parents and secure the needed information. As a last resort, the Social Worker/Case Manager will complete the application on the child's behalf, providing as much information as possible about the child's situation.

The eligibility staff will use the Title IV-E eligibility determination forms to determine if the child is eligible for Title IV-E benefits. The eligibility staff will also enter and authorize the payment on CCWIPS, and authorize Medical Assistance coverage as appropriate. If the child is eligible for Title IV-E benefits, this child becomes "categorically" Medicaid eligible. Worker will authorize the Medicaid accordingly. If the child is not eligible for Title IV-E benefits, a Medicaid determination must be made and the child certified (or not certified) accordingly.

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**Right to Appeal and Fair Hearing 447-10-55-10**  
**(Revised 5/15/07 ML #3087)**

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Any person who is dissatisfied as the result of an action taken or not taken by a county social service board or the North Dakota Department of Human Services with respect to his application is legally entitled to appeal for an impartial review of the circumstances through the fair hearing procedure (N.D.A.C. Chapter 75-01-03).

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**Child Support Enforcement 447-10-60**  
**(Revised 11/1/10 ML #3249)**

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Federal law requires states to take all necessary steps to enforce the assignment of support rights and, if necessary, establish support orders on behalf of children receiving foster care. N.D.C.C. § 50-09-06.1 provides that all support obligations are automatically assigned to the state when it is determined that a child is eligible for foster care. The assignment is not conditioned upon the consent of the parents.

For the purposes of this Chapter "parent(s)" is defined as the natural parent(s), adoptive parent(s), or guardian legally responsible for the support of the child.

It is important that parent(s) maintain a tie to and responsibility for their child in foster care. Involvement in financial support for that child is one component of that continuing involvement and responsibility. With that in mind, the Department has established procedures for the parent(s)' equitable financial support while their child is in foster care.

Whenever a child enters foster care, it is expected that the parent(s) will be fully involved in developing plans for their children in foster care, including payments of maintenance and medical costs.

A referral to Child Support Enforcement is made against each parent when a child is eligible for foster care, with two exceptions. A referral will not be made against either parent:

1. If one or both parents receive a subsidized adoption payment on behalf of a child in foster care, or

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2. If the child's placement was short-term. For purposes of this exception, "short-term" is defined as follows:
  - a. The child exited the placement by the time the referral would be sent, and
  - b. The child was in the placement for 60 days or less.

Both criteria a and b must be met in order for the referral to be eliminated (i.e., not made). If the child is in placement at the time of referral, a referral is made regardless of the amount of time the child has been in placement.

The existence of good cause must be noted on the referral.

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**Good Cause for Refusing to Cooperate 447-10-60-05  
(Revised 5/15/07 ML #3087)**

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In Section 208 of Public Law 94-88 in August 1975, Congress recognized that the AFDC custodian may have "good cause" not to cooperate with the child support collection effort. Accordingly, all custodians must be given the opportunity to claim a "good cause" exemption. This is accomplished by providing each with a SFN 443, Notice of Right to Claim 'Good Cause', at time of application. The notice briefly summarizes the legislative intent of the Child Support Enforcement Program, defines the custodian's responsibility to cooperate in the support enforcement effort, and provides a detailed explanation of the procedure for filing an exemption if the individual is interested in pursuing this course of action. The custodian shall be given sufficient time to read the notice(s) and raise questions before signing. Any custodian wishing to claim a "good cause" exemption shall so indicate in writing by completing SFN 446, Request to Claim 'Good Cause'.

EVIDENCE NEEDED TO ESTABLISH GOOD CAUSE - There must be evidence to substantiate a claim of "good cause." Congress clearly intended that exemptions on the basis of physical or emotional harm, either to the child or to the custodian, which in turn could be expected to reduce his or her capacity to care for the child, would be allowed only for circumstances of a genuine and serious nature. Mere belief that cooperation might result in harm is not a sufficient basis for finding "good cause." Evidence upon which the county social service board bases its finding on the "good cause" issue must be supported by written statements and contained in the case record.

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Note: Do not invoke good cause based on your assessment of the family financial situation. Continue to refer cases even if there seems to be a financial burden on the family. It is the responsibility of Child Support Enforcement to always take into account the financial situation when they work the case.

It is the custodian's responsibility to provide the county social service board with the evidence needed to establish "good cause." The custodian is normally given 20 days from the date of claim to collect the evidence although in exceptional cases the county social service board may grant reasonable additional time to allow for difficulty in obtaining proof. Records of law enforcement, social service, or adoption agencies may be readily available to document instances of rape, physical harm, or pending adoption, perhaps without requiring further investigation by the county social service board. Documentation of anticipated emotional harm to the child or custodian, however, may be somewhat more elusive. Whenever the claim is based in whole or in part on anticipated emotional harm, the county social service board shall consider the following:

1. The present emotional state of the individual subject to emotional harm;
2. The emotional health history of the individual subject to emotional harm;
3. Intensity and probable duration of the emotional impairment;
4. The degree of cooperation to be required; and
5. The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.

COUNTY SOCIAL SERVICE BOARD ROLE IN OBTAINING EVIDENCE - Upon request, the county social service board is required to assist the custodian in obtaining evidence

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necessary to support a "good cause" claim. This, however, is not intended to place an unreasonable burden on staff by allowing the claimant to require a "fishing expedition" in order to delay or frustrate a final determination. The county social service board's obligation to assist in this process, if requested, does not shift the custodian's basic responsibility to produce evidence to support the claim. Eligibility staff will promptly notify the custodian if additional evidence is necessary and indicate the specific type of document needed and how to go about obtaining it. Additionally, the staff is expected to actively assist in obtaining evidence when the individual is not reasonably able to obtain it. Even then the custodian may be able to provide specifics as to the type of document or record he/she believes will support the claim, and its source.

The county social service board is obligated to assume direct responsibility for investigating a "good cause" claim when it believes that the custodian's claim is authentic even though confirming evidence may not be available. This need may occur when the claim is based on a fear of serious physical harm and the claim is believed by agency staff. Such investigation will be conducted without requiring corroborative evidence by the custodian and may involve a careful review of the case record, evaluation of the credibility of the custodian's statements, and/or a confidential interview with an observer who has good reasons for not giving a written statement. Based on such an investigation and on professional judgment, the county social service board may find that "good cause" exists without the availability of absolute corroborative evidence.

During an investigation of a "good cause" claim, care must be taken to ensure that the location of the child is not revealed. In some circumstances, contact with the absent parent or alleged father may be deemed necessary to establish the claim. Before doing so, however, the custodian must be notified of this in order to be afforded the opportunity to (1) present additional information that makes contact with the absent parent unnecessary, or (2) have the "good cause" claim denied.

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"GOOD CAUSE" CLAIMS TO BE PROCESSED PROMPTLY - Except for extenuating circumstances, the "good cause" issue must be determined with the same degree of promptness as for the determination of other factors of AFDC eligibility (45 days). The county social service board may not deny, delay, or discontinue assistance pending the resolution of the "good cause" claim. In the process of making a final determination, eligibility staff is required to give Child Support Enforcement staff the opportunity to review and comment on the findings and basis for the proposed decision. It is emphasized, however, that responsibility for the final determination rests with eligibility staff after consultation with supervisory and Child Support Enforcement staff, and sometimes with social service personnel.

CHILD SUPPORT ENFORCEMENT STAFF TO BE KEPT INFORMED OF "GOOD CAUSE" STATUS - It is essential that eligibility staff keep Child Support Enforcement staff informed on the status of all "good cause" claims. This includes:

1. Promptly notifying Child Support Enforcement of all custodians who claim "good cause" exemptions and requesting suspension of child support activity pending a determination;
2. Promptly reporting to Child Support Enforcement all cases in which it has been determined that there is "good cause" for refusal to cooperate. If good cause is claimed, it temporarily suspends the effort of the child support unit to recover any costs expended for the child's care, for the period when good cause is in effect. It does not forgive those obligations. If good cause no longer exists, or the child returns home, the child support unit has an obligation to make recovery efforts for those funds expended while good cause was in effect; and
3. Promptly notifying Child Support Enforcement of all cases in which it has been determined that "good cause" for refusing to cooperate does not exist and that child support enforcement activity can begin or resume.



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CLAIMANTS OF "GOOD CAUSE" TO BE INFORMED OF DECISION - The custodian must be advised, in writing, of the county social service board's final decision that "good cause" does or does not exist and the basis for the findings. A copy of this communication shall be placed in the file. If "good cause" was determined not to exist, the communication must remind the custodian of the obligation to cooperate with the child support effort. It must also advise him/her of the right to appeal this decision. In the event the custodian does appeal, the Child Support Enforcement Agency shall be advised to delay its activity until the results of the appeal are known.

PERIODIC REVIEW OF "GOOD CAUSE" CLAIMS - The county social service board is required to review, not less frequently than EVERY 6 months, cases in which "good cause" was previously found to exist. Rather than routinely conducting full scale re-reviews on every case, however, a complete follow-up needs to be done on only those in which the original finding of "good cause" was based on a circumstance that is subject to change. If it is found that circumstances have changed so that "good cause" no longer exists, the recipient shall be so advised in writing. If "good cause" is found to continue to exist, the claimant must again be informed in writing.

Once the child support enforcement unit collects all the funds that were expended while good cause was in effect, any remaining child support that is collected is paid out on behalf of the child. For a family where both parents reside together, the remaining unassigned child support can be forgiven by court order.

It is important to locate any existing health insurance coverage for the child and determine whether the policy covers foster care expenses incurred by the child. Applying insurance proceeds to the foster care costs benefits, the child and the family by reducing or eliminating the family's obligation to reimburse taxpayers for assistance and, at the same time, saves money for county, state, and federal governments.

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**Prompt Referral to Child Support Enforcement  
Agency 447-10-60-10**

**(Revised 11/1/10 ML #3249)**

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The Department of Human Services uses automated systems to transmit and receive referrals. The referral information sent to Child Support Enforcement is used to establish paternity, locate the absent parent(s), and establish and enforce a support order. The referral may be transmitted by the County Social Service Board to Child Support Enforcement at any time following placement, but must be transmitted at time of initial payment authorization, at the latest.

Upon receipt of the referral, the Regional Child Support Enforcement Unit will establish a case and proceed based on the content of the information.

1. If the case is a good cause case, the Regional Child Support Enforcement Unit will open a case on the child support system and then close the case to IV-D services.
2. If good cause does not exist, the Regional Child Support Enforcement Unit will proceed to provide the child support services to enforce the assignment of support rights including, if necessary, establishing support orders on behalf of children receiving foster care. N.D.C.C. § 50-09-06.1.

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**REPEALED**

**Forms for Use in Foster Care/Child Support Payments  
447-10-60-15**

**(Repealed 11/1/10 ML #3249)**

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**REPEALED**

**Redeterminations 447-10-65**

**(Repealed 11/1/10 ML #3249)**

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**Forms 447-10-70**  
**(Revised 11/1/10 ML #3249)**  
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All foster care forms are available electronically via E-Forms. If the forms are completed properly, the eligibility staff will be able to correctly determine eligibility.

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**Placement Notification and Preliminary Eligibility  
Determination, SFN 630 447-70-05**

**(Revised 5/15/07 ML #3087)**

[View Archives](#)

SFN 630 is an official form designed to notify the eligibility staff that the child has entered foster care. The social worker completes this form as soon as the child is placed in care. This form provides basic information, which in some cases will provide sufficient information to make a Title IV-E eligibility determination without further data collection. In other cases it will need to be supplemented by further data collection and the use of the SFN 641, Foster Care Application, etc.

This form is available electronically via E-Forms.

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**Title IV-E/Title XIX Application, SFN 641  
447-10-70-10**

**(Revised 5/15/07 ML #3087)**

[View Archives](#)

SFN 641 is completed by the parent or the custodian, depending on the circumstances. Eligibility staff utilize the information on the completed form to assist in eligibility determination for Title IV-E/Title XIX.

This form is available through the department of Human Services and may also be obtained electronically via E-Forms.

<http://www.state.nd.us/eforms/>

Supplement to SFN 641 or 642, Attachment A, Data for Unemployed Parent Program.

This is a form utilized when there is reason to believe that a child might be eligible for Title IV-E/Title XIX through the Unemployed Parent Program. This form will not be utilized in every situation, but only in those cases where eligibility staff have determined that a child might be found eligible through the Unemployed Parent Program.

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**REPEALED**

**Title IV-E/Title XIX Redetermination, SFN 642  
447-10-70-15**

**(Repealed 11/1/10 ML #3249)**

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**Title IV-E Initial Eligibility Worksheet, SFN 869  
447-10-70-20**

**(Revised 5/15/07 ML #3087)**

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This mandatory (SFN 869, Title IV-E Initial Eligibility Worksheet) form is completed once, at every child's entry to foster care, to determine eligibility for federal funds.

This form is available electronically via E-Forms.

<http://www.state.nd.us/eforms/>

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**Title IV-E Reimbursability, SFN 870 447-10-70-25  
(Revised 11/1/10 ML #3249)**

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This mandatory form (SFN 870, Title IV-E Reimbursability) is only completed if the child met the initial Title IV-E eligibility requirements. It is used to determine if the child meets the reimbursability criteria.

This form is available electronically via E-Forms.

<http://www.state.nd.us/eforms/>

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**REPEALED**

**Use of SFN 869, "Title IV-E Initial Eligibility  
Determination" and SFN 870, "Title IV-E  
Reimbursability" 447-10-70-25-01**

**(Repealed 11/1/10 ML #3249)**

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**Title IV-E Income Calculation Worksheet, SFN 873  
447-10-70-30**

**(Revised 11/1/10 ML #3249)**

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SFN 873, Title IV-E Income Calculation Worksheet, is completed when the child's family has earned/unearned income and a copy put in the eligibility file.

This form is available electronically via E-Forms.

<http://www.state.nd.us/eforms/>

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**Understanding of the Parties for Continued Foster  
Care Services, SFN 1781 447-10-70-35**

**(Revised 5/15/07 ML #3087)**

[View Archives](#)

The form, Understanding of the Parties for Continued Foster Care Services, SFN 1781, is to be used to give the agency the authority to continue to provide services and authorize payment for the child.

This form is available on CCWIPS and completed by the social worker and signed by the 18-year-old child in foster care.

This form is available electronically via E-Forms.

<http://www.state.nd.us/eforms/>

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**Notice of Change Forms, SFN 45 447-10-70-40  
(Revised 5/15/07 ML #3087)**

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SFN 45, Notice of Change Form, is a form that can be used by the social worker to notify the eligibility staff of changes in the child's situation, which will have an impact on the child's eligibility for federal funds, and to alert the eligibility staff to placement changes and closures. Since there are alerts designed in CCWIPS that will notify appropriate staff of placement changes and closures, this is no longer a mandatory form.

This form is available electronically via E-Forms.

<http://www.state.nd.us/eforms/>