



Office of Children and Family Services

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Administrative Directive

Transmittal:	20-OCFS-ADM-23
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Child Welfare and Community Services
Date:	December 14, 2020
Subject:	Stafford Act Flexibility
Suggested Distribution:	Directors of Social Services Voluntary Agency Executive Directors Child Welfare Supervisors Foster Care Supervisors
Contact Person(s):	See section VI.
Attachments:	Attachment A: <i>Attestation of Title IV-E Eligibility Due to Stafford Act and Covid-19 Pandemic</i>

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
16-OCFS-ADM-20, 18-OCFS-ADM-05, 18-OCFS-ADM-07, 19-OCFS-ADM-07, 19-OCFS-ADM-12		18 NYCRR §§421.16(c)(2), 442.18(e)(2), 443.2(b)(16), 448.3(c)(3)	42 U.S.C. §§5121 et seq., 5141 SSA §§472(k)(4)(G), 472(k)(3)(4).		ACYF-CB-PI- 20-10

I. Purpose

The purpose of this Administrative Directive (ADM) is to notify local departments of social services (LDSSs) and voluntary authorized agencies (VAs) of the flexibility to waive certain title IV-E requirements due to the COVID-19 pandemic as authorized by the Robert T.

Stafford Disaster Relief and Emergency Assistance Act¹ (Stafford Act). The ADM also introduces the process LDSSs and VAs must follow for requesting such flexibility.

II. Background

The Stafford Act provides that federal agencies that administer federal assistance programs may modify or waive administrative conditions of federal assistance programs under certain limited circumstances if the following conditions are met:

- There has been a declaration of a major disaster with respect to the applicable geographic area.
- State or local authorities have requested the modification or waiver.
- The modifications or waivers are with respect to administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.²

On May 8, 2020, the federal Administration on Children, Youth and Families (ACYF) issued Program Instruction (PI) ACYF-CB-PI-20-10. This PI provided information to states on how to request flexibility available under the Stafford Act as a result of the COVID-19 pandemic.

The PI acknowledges that many title IV-E agencies have challenges in meeting certain federal requirements during the COVID-19 pandemic, and therefore allows for flexibility in meeting certain title IV-E requirements. The flexibility that is allowed under the Stafford Act applies only to jurisdictions that have major disaster declarations due to the COVID-19 pandemic, and only during the time the title IV-E agency is unable to meet a requirement as a result of the major disaster.

The PI allows for title IV-E agencies to request flexibility in four areas:

1. Title IV-E Eligibility for Youth Age 18 and Older: Simplified Process

Allows title IV-E agencies to extend eligibility for title IV-E foster care maintenance payments, adoption assistance, and guardianship assistance for youth up to age 21 through a more simplified process rather than a title IV-E plan amendment.

2. Title IV-E Assistance for Youth Age 18 and Older: Education and Employment Conditions

Extended eligibility for title IV-E assistance with respect to foster care, adoption, and legal guardianship services for youth up to age 21, if the youth is unable to meet the education or employment conditions outlined in §475(8)(B)(iv) of the Social Security Act (SSA) as a direct result of the declaration of the major disaster that is the COVID-19 pandemic.

3. Accreditation and Reccreditation of Qualified Residential Treatment Programs (QRTPs)

Title IV-E requires that facilities be accredited in order to be considered eligible for reimbursement under title IV-E as a QRTP.³ However, if conditions related to the

¹ 42 U.S.C. §5121 et seq.

² 42 U.S.C. §5141.

³ SSA §472(k)(4)(G).

COVID-19 pandemic prevent a facility from completing its accreditation or reaccreditation as a QRTP, the title IV-E agency may request flexibility under the Stafford Act to allow claiming reimbursement of title IV-E expenses on behalf of an otherwise eligible child who is placed in the QRTP only during the time the requirement is unable to be met as a result of the major disaster. The facility must meet all other statutory requirements, including that the QRTP is licensed or approved.⁴ As a reminder, title IV-E agencies must meet additional case planning and court approval requirements for a child to be eligible for title IV-E foster care maintenance payments while placed in a QRTP.⁵ The accreditation/reaccreditation process must resume once the major disaster is over and it is practicable to do so.

4. Provisional Licensure for Foster Family

A title IV-E agency may request flexibility under the Stafford Act to allow claiming of title IV-E reimbursement on behalf of an otherwise eligible child who is placed in a foster family home that is provisionally or conditionally approved or licensed, if the declared major disaster precludes full completion of the licensing process. The title IV-E agency must complete as many of the requirements for licensure as practicable, taking into account local requirements related to physical/social distancing guidelines and shelter-in-place orders. The title IV-E agency must complete any remaining licensing requirements as soon as it is safe to do so in accordance with local and state health authorities. The title IV-E agency also must ensure that the foster family home is safe for children.

III. Program Implications

The New York State Office of Children and Family Services (OCFS) requested and received approval from ACYF for three of the four Stafford Act allowable flexibilities. New York State's title IV-E state plan already allows for youth age 18 and older to remain in foster care and to be eligible for title IV-E reimbursement; therefore, the simplified process regarding the title IV-E eligibility for youth age 18 and older was not needed. Information on the three approved flexibilities are discussed in this section:

- Title IV-E Assistance for Youth Age 18 and Older: Education and Employment Conditions

OCFS has opted into this flexibility. If a youth age 18-21 is in foster care, or is a recipient of an adoption or KinGAP subsidy and is unable to meet the required education or employment conditions as a direct result of the COVID-19 pandemic, the payments remain eligible for title IV-E reimbursement for the extent of the declared major disaster. Please refer to the required action section of this ADM for documentation requirements.

- Accreditation and Reaccreditation of Qualified Residential Treatment Programs (QRTPs)

⁴ SSA §472(k)(4)(G).

⁵ SSA§§472(k)(3)(4).

OCFS has opted into this flexibility; however, at the time of this ADM's release, OCFS had not yet finalized the process for QRTPs; more information on this flexibility is forthcoming.

- Provisional Licensure for Foster Family Homes

In New York State, the language used to refer to foster boarding homes (FBHs) differs from the federal language. The title IV-E flexibility referred to in this section of the PI relates to New York State's process of approving emergency FBHs. This flexibility is limited to the criminal history record checks (CHRCs) that are completed via fingerprinting. The completion of and satisfactory results of the CHRCs are required to convert a home from emergency status to full approval. If the declared major disaster (COVID-19 pandemic) precludes the completion of the CHRCs, all of the other requirements for full approval are satisfactorily completed, and the child(ren) are safe in the FBH, then the FBH may maintain title IV-E eligibility. Should an LDSS or VA utilize this flexibility, the CHRCs must be completed as soon as possible. Please refer to the required action section of this ADM for more information.

IV. Required Action

Emergency Approval-Criminal History Record Checks (CHRCs) Delay Due to the COVID-19 Pandemic

An LDSS may request title IV-E eligibility for an FBH that was emergency approved but was unable to be fully approved due to inability to complete a fingerprint CHRC as a result of the COVID-19 pandemic.

To complete such request, the LDSS/VA worker must do the following:

1. Update the F/A home licensing window in Foster and Adoptive Home Development (FAD)
 - **If the date requested is between March 6, 2020, and the date of this ADM's release and**
 - the FBH was fully approved after a COVID-19-related delay in completing the CHRC:
 - change the date of full approval to the date all requirements for full approval were completed minus the CHRC. This will also require the annual reauthorization date to be moved up. The FBH will automatically be made eligible for title IV-E.
 - After the FBH is fully approved, the completion dates for the CHRC must be deleted and the accurate CHRC dates need to be added as soon as they are completed.
 - the FBH is still in emergency approval status pending completion of the CHRC due to a COVID-19-related delay:
 - fully approve the FBH by inserting any date for sent/received CHRC, select "No Criminal Record" or "No

Objection-FBI,” submit for supervisory approval, and fully approve the FBH. The FBH will automatically be made eligible for title IV-E.

- After the FBH is accepted as fully approved, the CHRC dates that were put in must be deleted. The actual dates of the CHRC completion and correct results must be entered as soon as they are received.
 - **If the date requested is in the time frame spanning from the date of this ADM’s release until the end of New York State’s state of emergency (further guidance to be released upon date determination),**
 - insert any date for sent/received CHRC, select “No Criminal Record” or “No Objection-FBI,” submit for supervisory approval, and fully approve the FBH.
 - After the FBH is accepted as fully approved, the CHRC dates that were put in must be deleted. The actual dates of the CHRC completion and correct results must be entered as soon as they are received.
2. Complete the attestation that is attached to this ADM.
- Maintain a signed copy of the attestation in the title IV-E foster care case file as this document will be required if the case is requested for monitoring and/or a federal Title IV-E Foster Care Eligibility Review.
 - This document can also be uploaded into FAD.
 - Provide a copy to the respective regional office.

Title IV-E Assistance for Youth Age 18 and Older: Education and Employment Conditions

Foster Care

If an LDSS requests title IV-E eligibility for a youth in foster care age 18-21 who is/was unable to fulfill education/employment conditions during the time period from March 6, 2020, until the end of New York State’s state of emergency (further guidance to be released upon date determination), the LDSS/VA worker must do the following:

1. Complete a progress note in the youth’s case record stating that the youth is/was unable to fulfill the education/employment conditions during the COVID-19 pandemic.
2. Complete the attestation that is attached to this ADM.
 - Maintain a signed copy of the attestation in the title IV-E foster care case file as this document will be required if the case is requested for monitoring and/or a federal Title IV-E Foster Care Eligibility Review.
 - This document can also be uploaded into FAD.
 - Provide a copy to the respective regional office.

Adoption Subsidy or Kinship Guardianship Assistance Payment (KinGAP)

If an LDSS receives the annual attestation from an adoption or KinGAP subsidy recipient that states the youth IS NOT meeting the education or employment conditions that are required during the period from March 6, 2020, to until the end of the New York State’s state of emergency (further guidance to be released upon date is determination) and the

LDSS wants to maintain title IV-E eligibility for the payment, the LDSS must do the following:

- If title IV-E eligibility has already been terminated during the period of March 6, 2020, to the date of this ADM as a result of the annual attestation response
 - complete the attestation attached to this ADM and place it in the youth's case file. This document will need to be provided if the adoption case is selected for monitoring. This document can also be uploaded in CONNECTIONS, and
 - refer to the system implications section for how to complete a retro eligibility change in the Welfare Management System (WMS).
- If title IV-E eligibility has not been terminated as a result of the annual attestation, the LDSS may, from the date of this ADM until the end of the New York State's state of emergency (further guidance to be released upon date determination),
 - maintain the adoption subsidy or KinGAP eligibility for title IV-E, and
 - complete the attestation attached to this ADM and place it in the youth's case file and/or upload in CONNECTIONS.

V. System Implications

If needed, an eligibility change, retroactive to March 6, 2020, can be entered on the open Welfare Management System (WMS) case to continue title IV-E eligibility. Retroactive eligibility may be done in WMS for up to two (2) years in the past, but not prior to the most recent WMS application date. If the WMS case is closed, a Benefits Issuance Control System (BICS) accounts adjustment must be done to reflect appropriate title IV-E reimbursement. The BICS Accounts Adjustment should reflect only a change to the claiming category for the child.

Any questions on systems entries should be sent to the Bureau of Financial Operations Title IV-E POS Type mailbox at OCFS.sm.finance.IVEFC.POSTypes@ocfs.ny.gov.

VI. Contacts

Any questions concerning this release should be directed to the appropriate regional office, Division of Child Welfare and Community Services:

Buffalo Regional Office - Amanda Darling (716) 847-3145

Amanda.Darling@ocfs.ny.gov

Rochester Regional Office - Christopher Bruno (585) 238-8201

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Syracuse Regional Office - Sara Simon (315) 423-1200

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Albany Regional Office - John Lockwood (518) 486-7078

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Westchester Regional Office - Sheletha Chang (845) 708-2498

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New York City Regional Office - Ronni Fuchs (212) 383-4873

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Native American Services - Heather LaForme (716) 847-3123

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VII. Effective Date

This ADM is effective immediately.

/s/ Lisa Ghartey Ogundimu

Issued By:

Name: Lisa Ghartey Ogundimu

Title: Deputy Commissioner

Division/Office: Child Welfare and Community Services