

§ 1356.50

sources. Payments for nonrecurring expenses shall be made either directly by the title IV-E agency or through another public or licensed nonprofit private agency.

(h) When the adoption of the child involves a placement outside the State or Tribal service area, the title IV-E agency that enters into an adoption assistance agreement under section 473(a)(1)(B)(ii) of the Act or under a State or Tribal subsidy program will be responsible for paying the nonrecurring adoption expenses of the child. In cases where there is placement outside the State or Tribal service area but no agreement for other Federal, Tribal, or State adoption assistance, the title IV-E agency in the jurisdiction in which the final adoption decree is issued will be responsible for reimbursement of nonrecurring expenses if the child meets the requirements of section 473(c).

(i) The term “nonrecurring adoption expenses” means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State, Tribal or Federal law, and which have not been reimbursed from other sources or other funds. “Other expenses which are directly related to the legal adoption of a child with special needs” means the costs of the adoption incurred by or on behalf of the parents and for which parents carry the ultimate liability for payment. Such costs may include the adoption study, including health and psychological examination, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the placement or adoption process.

(j) Failure to honor all eligible claims will be considered non-compliance by the title IV-E agency with title IV-E of the Act.

(k) A title IV-E expenditure is considered made in the quarter during which the payment was made by a title IV-E agency to a private nonprofit agency, individual or vendor payee.

[53 FR 50220, Dec. 14, 1988, as amended at 77 FR 949, Jan. 6, 2012]

45 CFR Ch. XIII (10-1-24 Edition)

§ 1356.50 Withholding of funds for non-compliance with the approved title IV-E plan.

(a) To be in compliance with the title IV-E plan requirements, a title IV-E agency must meet the requirements of the Act and 45 CFR 1356.20, 1356.21, 1356.30, and 1356.40 of this part.

(b) To be in compliance with the title IV-E plan requirements, a title IV-E agency that chooses to claim FFP for voluntary placements must meet the requirements of the Act, 45 CFR 1356.22 and paragraph (a) of this section; and

(c) For purposes of this section, the procedures in § 1355.39 of this chapter apply.

[48 FR 23117, May 23, 1983, as amended at 65 FR 4091, Jan. 25, 2000; 66 FR 58677, Nov. 23, 2001; 77 FR 950, Jan. 6, 2012]

§ 1356.60 Fiscal requirements (title IV-E).

(a) *Federal matching funds for foster care maintenance and adoption assistance payments.* (1) Federal financial participation (FFP) is available to title IV-E agencies under an approved title IV-E plan for allowable costs in expenditures for:

(i) Foster care maintenance payments as defined in section 475(4) of the Act, made in accordance with §§ 1356.20 through 1356.30, section 472 of the Act, and, for a Tribal title IV-E agency, section 479B of the Act; and

(ii) Adoption assistance payments made in accordance with §§ 1356.20 and 1356.40, applicable provisions of section 473, section 475(3), and, for a Tribal title IV-E agency, section 479B of the Act.

(2) Federal financial participation is available at the rate of the Federal medical assistance percentage as defined in section 1905(b), 474(a)(1) and (2), and 479B(d) of the Act as applicable, definitions, and pertinent regulations as promulgated by the Secretary, or the designee.

(b) *Federal matching funds for title IV-E agency training for foster care and adoption assistance under title IV-E.* (1) Federal financial participation is available at the rate of seventy-five percent (75%) in the costs of:

(i) Training personnel employed or preparing for employment by the title

IV-E agency administering the plan, and;

(ii) Providing short-term training (including travel and per diem expenses) to current or prospective foster or adoptive parents and the members of the state licensed or approved child care institutions providing care to foster and adopted children receiving title IV-E assistance.

(2) All training activities and costs funded under title IV-E shall be included in the agency's training plan for title IV-B.

(3) Short and long term training at educational institutions and in-service training may be provided in accordance with the provisions of §§ 235.63 through 235.66(a) of this title.

(c) *Federal matching funds for other title IV-E agency administrative expenditures for foster care and adoption assistance under title IV-E.* Federal financial participation is available at the rate of fifty percent (50%) for administrative expenditures necessary for the proper and efficient administration of the title IV-E plan. The State's cost allocation plan shall identify which costs are allocated and claimed under this program.

(1) The determination and redetermination of eligibility, fair hearings and appeals, rate setting and other costs directly related only to the administration of the foster care program under this part are deemed allowable administrative costs under this paragraph. They may not be claimed under any other section or Federal program.

(2) The following are examples of allowable administrative costs necessary for the administration of the foster care program:

- (i) Referral to services;
- (ii) Preparation for and participation in judicial determinations;
- (iii) Placement of the child;
- (iv) Development of the case plan;
- (v) Case reviews;
- (vi) Case management and supervision;
- (vii) Recruitment and licensing of foster homes and institutions;
- (viii) Rate setting;
- (ix) A proportionate share of related agency overhead;
- (x) Costs related to data collection and reporting; and

(xi) Costs related to legal representation described in paragraph (c)(4) of this section.

(3) Allowable administrative costs do not include the costs of social services provided to the child, the child's family or foster family which provide counseling or treatment to ameliorate or remedy personal problems, behaviors or home conditions.

(4) The following are allowable administrative costs of legal representation:

(i) Legal representation in foster care proceedings provided by an attorney representing the title IV-E agency or any other public agency (including an Indian tribe) which has an agreement in effect under which the other agency has placement and care responsibility of a title IV-E eligible child pursuant to 472(a)(2)(B)(ii) of the Act;

(ii) Independent legal representation provided by an attorney representing a child in title IV-E foster care, a child who is a candidate for title IV-E foster care, the child's parent(s), the child's relative caregiver(s), and the child's Indian custodian(s) in foster care and other civil legal proceedings as necessary to carry out the requirements in the agency's title IV-E foster care plan. Independent legal representation in civil proceedings includes facilitating, arranging, brokering, advocating, or otherwise linking clients with providers and services as identified in the child's case plan pursuant to sections 422, 471(a)(16), and 475 of the Act; and

(iii) Legal representation provided by an attorney representing an Indian child's tribe (as defined by 25 U.S.C.1903(5)), or representation of an Indian child's tribe provided by a non-attorney, when the child's tribe participates or intervenes in any state court proceeding for the foster care placement or termination of parental rights of an Indian child who is in title IV-E foster care or an Indian child who is a candidate for title IV-E foster care.

(d) *Cost of the data collection system.*

(1) Costs related to data collection system initiation, implementation and operation may be charged as an administrative cost of title IV-E at the 50 percent matching rate subject to the restrictions in paragraph (d)(2) of this section

(2) For information systems used for purposes other than those specified by section 479 of the Act, costs must be allocated and must bear the same ratio as the foster care and adoption population bears to the total population contained in the information system as verified by reports from all other programs included in the system.

(e) *Federal matching funds for CCWIS and Non-CCWIS.* Federal matching funds are available at the rate of fifty percent (50%). Requirements for the cost allocation of CCWIS and non-CCWIS project costs are at §1355.57 of this chapter.

[47 FR 30925, July 15, 1982, as amended at 48 FR 23117, May 23, 1983; 53 FR 50221, Dec. 14, 1988; 58 FR 67938, 67947, Dec. 22, 1993; 65 FR 4091, Jan. 25, 2000; 66 FR 58677, Nov. 23, 2001; 77 FR 950, Jan. 6, 2012; 81 FR 35482, June 2, 2016; 87 FR 42339, July 15, 2022; 89 FR 40417, May 10, 2024]

§§ 1356.65–1356.66 [Reserved]

§ 1356.67 Procedures for the transfer of placement and care responsibility of a child from a State to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement.

(a) Each State with a title IV-E plan approved under section 471 of the Act must establish and maintain procedures, in consultation with Indian Tribes, for the transfer of responsibility for the placement and care of a child under a State title IV-E plan to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement in a way that does not affect a child's eligibility for, or payment of, title IV-E and the child's eligibility for medical assistance under title XIX of the Act.

(b) The procedures must, at a minimum, provide for the State to:

(1) Determine, if the eligibility determination is not already completed, the child's eligibility under section 472 or 473 of the Act at the time of the transfer of placement and care responsibility

of a child to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement.

(2) Provide essential documents and information necessary to continue a child's eligibility under title IV-E and Medicaid programs under title XIX to the Tribal title IV-E agency, including, but not limited to providing:

(i) All judicial determinations to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts described in section 471(a)(15) of the Act have been made;

(ii) Other documentation the State has that relates to the child's title IV-E eligibility under sections 472 and 473 of the Act;

(iii) Information and documentation available to the agency regarding the child's eligibility or potential eligibility for other Federal benefits;

(iv) The case plan developed pursuant to section 475(1) of the Act, including health and education records of the child pursuant to section 475(1)(C) of the Act; and

(v) Information and documentation of the child's placement settings, including a copy of the most recent provider's license or approval.

[77 FR 950, Jan. 6, 2012]

§ 1356.68 Tribal title IV-E agency requirements for in-kind administrative and training contributions from third-party sources.

(a) *Option to claim in-kind expenditures from third-party sources for non-Federal share of administrative and training costs.* A Tribal title IV-E agency may claim allowable in-kind expenditures from third-party sources for the purpose of determining the non-Federal share of administrative or training costs subject to paragraphs (b) through (d) of this section.

(b) *In-kind expenditures for fiscal years 2010 and 2011—*(1) *Administrative costs.* A Tribal title IV-E agency may claim allowable in-kind expenditures from third-party sources of up to 25 percent of the total administrative funds expended during a fiscal quarter pursuant to section 474(a)(3)(C), (D) or (E) of the Act.