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Administrative Directive

Transmittal:	11-OCFS-ADM-02
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	March 3, 2011
Subject:	Re-entry into Foster Care by Former Foster Care Youth between the Ages of 18 and 21
Suggested Distribution:	Directors of Social Services Foster Care Supervisors Preventive Supervisors Child Protective Services Supervisors Staff Development Coordinators
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Attachments:	Attachment A: <i>Written Notice for Youth Aging Out of Foster Care (Model notice – may be revised)</i> Attachment B. <i>Re-entry into Foster Care Ages 18 and Over Eligibility Checklist (LDSS 4415 rev. 11/10)</i> Attachment C. <i>Instructions for completing the “Re-entry into Foster Care Ages 18 and Over Eligibility Checklist” (LDSS 4415 rev. 11/10)</i>
Attachments Available Online:	<i>The attachments will soon be incorporated into Chapter One-A of the Eligibility Manual for Child Welfare Programs, which is available at:</i> http://www.ocfs.state.ny.us/main/publications/eligibility/Chapter%20One%20Title%20IV-E%20Eligibility.pdf

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
10-OCFS-ADM-10		18 NYCRR 441.21 Casework Contacts 18 NYCRR 441.22 Health and Medical Services 18 NYCRR 422 Parental Support of Children Receiving Foster Care 18 NYCRR 372 Emergency Assistance to Needy Families With Children 18 NYCRR 430.9 Appropriate Provision of Mandated Preventive Services	Laws of New York 2010 Chapter 342 SSL 1091-b		ACYF-CB-PI-10-11

I. Purpose

The purpose of this Administrative Directive (ADM) is to advise local departments of social services (LDSS) and voluntary authorized agencies of the provisions of Chapter 342 of the Laws of 2010 and related amendments to federal and state law. Chapter 342 permits former foster youth between the ages of 18 and 21 to re-enter foster care under certain circumstances, and requires LDSS to provide notice to a youth transitioning out of care of his or her right to re-enter care. Chapter 342 became effective November 11, 2010.

II. Background

Older adolescents aging out of foster care often need services and supports to make a successful transition from foster care to self-sufficiency. Recognizing that youth ages 18, 19 and 20 who choose to leave care may find themselves homeless or otherwise in need, OCFS regulations have long required that every child discharged to *another planned living arrangement with a permanency resource (APLA)* and every child deemed to have this goal be offered a trial discharge status for at least six months and remain in the custody of the LDSS during the entire trial discharge period. However, we also recognize that youth may be focused on becoming independent of the child welfare system and consequently may refuse to consent to a trial discharge status. In addition, prior to October 1, 2010, Title IV-E reimbursement was not available for youth over the age of 18 on trial discharge or in foster care.

In recent years, the federal Fostering Connections to Success and Increasing Adoption Act of 2008 and several state laws were enacted to provide supports and services for older adolescents between the ages of 18 and 21. These new laws

require transition planning for youth, as well as education and assistance on executing a health care proxy, and continued Medicaid coverage. As previously mentioned, on October 1, 2010, federal Title IV-E foster care reimbursement became available to otherwise eligible youth between the ages of 18 and 21 who remain in foster care. Most recently, Chapter 342 of the Laws of 2010 permits a former foster youth who exited foster care on a final discharge status at age 18, 19 or 20 to re-enter foster care under certain circumstances, provided the youth is under the age of 21.

III. Program Implications

The intent of Chapter 342 of the Laws of 2010 is to add flexibility in meeting the needs of former foster care youth up to age 21. The law now gives youth aging out of foster care who have had a final discharge from care due to a failure to consent to a continuation of placement, or have been discharged at age 18 or older to permanency (returned home; went to a relative's care, custody or guardianship; or was adopted) and that permanency arrangement has been disrupted or dissolved, the opportunity to re-enter foster care when no reasonable alternative exists. Chapter 342 applies to youth whose prior episode of care was initiated through a juvenile delinquency (JD) or person in need of supervision (PINS) proceeding under Article 3 or 7 of the Family Court Act, respectively, if such youth otherwise are eligible under Chapter 342. All provisions of Chapter 342 accordingly would apply to such youth who re-enter care, including the notice required when the youth leaves care due to failing to consent to a continuation of placement or being discharged to permanency.

LDSS are now required to provide notice to a youth who is aging out of foster care that the youth has the right to request that the LDSS petition the Family Court to return him/her to foster care, provided he or she is under the age of 21. In addition, the notice must inform the youth that he or she also may petition the court to return to foster care. The LDSS or youth petitioning the court must prove that no reasonable alternative to foster care exists.

Title IV-E reimbursement will be available for youth re-entering foster care after attaining the age of 18 if they meet the criteria on the "*RE-ENTRY INTO FOSTER CARE AGE 18 AND OVER ELIGIBILITY CHECKLIST*" (LDSS # 4415 rev. 11/10) (see attachment B). The *Instructions for Completing the "Re-entry into Foster Care Ages 18 and Over Eligibility Checklist"* (LDSS 4415 rev. 11/10) (see attachment C) will be incorporated into the Title IV-E Foster Care Eligibility Manual and available at:

<http://www.ocfs.state.ny.us/main/publications/eligibility/Chapter%20One%20Title%20IV-E%20Eligibility.pdf>

The Transition Plan has been revised to require LDSS and agencies to document the date the youth was told about and given written notice of his or her right to re-enter care, and the name of the youth's attorney and the attorney's contact information. Since a youth is required to get a copy of his or her transition plan,

the youth will be able to contact his or her attorney and/or worker to request to re-enter foster care. The revised Transition Plan is available at:
http://www.ocfs.state.ny.us/main/forms/foster_care

IV. Required Action

A. Trial Discharge

Trial discharge for youth between the ages of 18-21 may be extended at each scheduled permanency hearing, provided the youth consents to the extension. As in current regulation 18 NYCRR 430.12(f) (4) and the program instructions of the Administration for Children and Families ACYF-CB-PI-10-11, multiple trial discharges approved by the court are permitted, consistent with the needs of the child.

B. Required Written Notice for Youth Aging Out of Foster Care

The LDSS is required to tell and provide written notification to all youth who are aging out of foster care, due to being discharged to permanency or failing to consent to a continuation of placement, of their right to apply to re-enter foster care (see Attachment A, "Written Notice for Youth Aging Out of Care"). The notice must:

1. advise the youth that the application to return to foster care must be done within 24 months of the youth's first final discharge, provided the youth is under the age of 21;
2. inform the youth that re-entry into foster care will only be available where the youth has no reasonable alternative to foster care and consents to enrollment in and attendance at an appropriate educational or vocational program, unless evidence is submitted that such enrollment or attendance is unnecessary or inappropriate, given the particular circumstances of the child; and
3. include the name and contact information of the youth's attorney.

The LDSS may use the model written notice or an alternative notice, as long as it includes items 1 through 3 above. In addition, the LDSS must document the date it was provided in the youth's transition plan, or, in the event of an unplanned discharge, in the case record. The LDSS must make every effort to provide notice to the youth in person. If this is not possible, the notice must be sent to the youth's discharge address.

C. Required Preventive Services

The eligibility for preventive services of a youth requesting to re-enter care is the same as any other foster care youth under SSL Section 409-a. LDSS must provide preventive services to any youth requesting to re-enter foster care when providing preventive services may avoid the youth returning to care. If a lack of adequate housing, for example, is a factor that will cause the re-entry of a youth

into foster care, preventive services could include special cash grants in the form of rent subsidies, including rent arrears, or any other assistance, sufficient to obtain adequate housing. Chafee Independent Living Program funds are another option that can be used for making room and board payments.

The LDSS's efforts must be sufficient to obtain a reasonable efforts order if the child should subsequently enter foster care. Such order is necessary to claim and be reimbursed under Title IV-E.

Former foster care youth are only eligible to return to foster care if the motion to the court is filed within 24 months of the date of the first final discharge. Preventive service providers should evaluate youth before they reach the 24 month mark to determine if preventive services are meeting the needs of the youth or if it is in the best interest of the child to petition the court to return the youth to foster care.

D. Court Proceedings

The LDSS, or a former foster care youth, may make a motion to the Family Court for the youth to re-enter foster care. The court motion must be filed within 24 months from the date of the first final discharge that occurred on or after the youth's 18th birthday, providing the youth is under 21 years of age. If the LDSS refuses to file a motion to return a youth to foster care, the youth has the right to file a motion with the court.

New foster care re-entry court forms are posted on the Office of Court Administration website at:

<http://www.courts.state.ny.us/forms/familycourt/permanencyhearing.shtml>.

These forms include PH-7, Order to Show Cause (Reentry into Foster Care); PH-7a, Notice of Motion (Reentry into Foster Care); PH-7b, Affidavit by Youth in Support of Motion to Reenter Foster Care; PH-7c, Affidavit by Agency in Support of Order to Show Cause (Reentry into Foster Care); and PH-8, Order on Motion to Reenter Foster Care.

1. LDSS's Motion to the Court

The LDSS's affidavit must show:

- a) the youth has no reasonable alternative to foster care;
- b) the youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless evidence is submitted that such enrollment or attendance is unnecessary or inappropriate, given the particular circumstances of the child;
- c) re-entry is in the best interests of the youth; and
- d) the youth consents to the re-entry into foster care.

2. Former Foster Care Youth Motion to the Court

An affidavit or other evidence provided to the court and the social services official must show:

- a) the requirements outlined above under “section IV. Required Action, D. Court Proceedings, 1. a, b, and c” are met; and
- b) the LDSS consents to the re-entry of the youth, or, if the LDSS refuses to consent to the re-entry of the youth, that this refusal is unreasonable.

3. LDSS Refusal to Consent

The court can overrule an LDSS’s refusal to consent to allow a youth to re-enter care. If the LDSS refuses to consent, the court shall determine that the refusal is unreasonable if:

- a) the youth has no reasonable alternative to foster care;
- b) the youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless the court finds a compelling reason that such enrollment or attendance is unnecessary or inappropriate; and
- c) re-entry into foster care is in the best interest of the youth.

4. Temporary Order to Return a Youth to Foster Care

If, at any time during the pendency of the court proceeding, the court finds a compelling reason that it is in the best interest to return the youth to the care of the LDSS, the court may issue a temporary order.

E. Returning a Youth to Foster Care a Second Time

The court may grant only two separate re-entries to foster care. If the court has previously granted a motion to return a youth to foster care, the court must meet the requirements outlined previously in Section IV. Required Action, D. Court Proceedings, 1 or 2, and also:

- a) determine that there is a compelling reason to return the youth to care; and
- b) consider the youth's compliance with previous orders of the court, including the youth's previous participation in an appropriate educational or vocational program.

F. Foster Care Requirements

When it is in the best interest of the youth, the youth being returned to foster care following an interruption of care should be placed with the foster care parents with whom the youth was last placed, even if this placement exceeds the capacity of the foster home [SSL Section 398.6(n)]. The county of origin is responsible for placing the youth, regardless of the county the youth currently resides in or was previously placed in.

This law requires that all regular foster care requirements that apply to youth under the age of 18 also apply to youth over the age of 18. This includes but is not limited to: making the necessary case work contacts with the child, parents or relatives, and caretaker (18 NYCRR 441.21 Casework Contacts); providing comprehensive medical and health services (18 NYCRR 441.22 Health and

Medical Services); and making assessments for parental support (18 NYCRR 422 Parental Support of Children Receiving Foster Care).

The permanency hearing requirements for former foster care youth re-entering care are the same as for all foster care youth. After granting the motion to return a youth to foster care, the court will set a date for a permanency hearing no later than thirty days after the hearing in which the motion was granted.

G. Eligibility and Payment Responsibility

A Title IV-E determination is to be made for each youth re-entering foster care using the criteria on the “RE-ENTRY INTO FOSTER CARE FOR YOUTH AGE 18 AND OVER ELIGIBILITY CHECKLIST” (LDSS 4415 rev. 11/10) (see attachment B). **Please note** that for youth re-entering foster care within six months of the previous episode, the contrary to welfare / best interests court determination and the reasonable efforts court determination from the initial placement order for that previous episode of foster care will meet the criteria for the re-entry episode. To claim IV-E for a child who otherwise satisfies the other IV-E standards, the court order must be in place.

No determination of Emergency Assistance for Families (EAF) is to be made for any re-entry youth so that they are not at risk of using any portion of their five year time clock for temporary assistance.

The county of origin is responsible for payment if the child re-enters foster care, regardless of the county the youth currently resides in or is placed in. If a youth returns to an agency requesting to re-enter foster care, the agency is required to notify the LDSS.

Youth whose prior episode of care was initiated through a JD (Article 3 of the FCA) or PINS (Article 7 of the FCA) proceeding are able to re-enter foster care after reaching age 18 if otherwise eligible under Chapter 342. The petition and supporting documentation must be filed and the court’s order granted for such youth under Section 1091 of the FCA, as added by Chapter 342. Youth who are placed in the custody of OCFS, including youth placed in voluntary agencies or OCFS facilities are not eligible for re-entry under this law.

V. **Systems Implications**

A. CONNECTIONS

Currently, CONNECTIONS does not allow the tracking of youth 18 years of age or older. Tracking of youth 18 years or older will not be available to end users in the near future. CONNECTIONS processing for this population requires the intervention of OCFS-IT / state staff.

In order to track a former foster care youth 18, 19 or 20 years old in receipt of preventive services or who re-enters foster care, the worker must do the following:

1. If there is currently a CONNECTIONS FSS / CWS stage opened and the child is not already part of that stage, add the child to the stage.
2. If there is not a CONNECTIONS FSS / CWS opened, create an FSI and stage progress to an FSS / CWS stage. **DO NOT CREATE THE WMS APPLICATION.**
3. Send a request to the AppHelp mailbox (ocfs.sm.conn_app@ocfs.state.ny.us) with the following information:
 - a. case and stage ID
 - b. child's person ID (PID)
 - c. program choice and effective date of program choice
 - d. permanency planning goal (PPG) and effective date of PPG

Once processing has been completed, the worker will be advised to either process the addition of the child to the existing WMS case, or create the WMS application and process the WMS case opening.

For a child who left foster care at age 18 and who was free for adoption (in a CCR) at the time, and who re-enters foster care, it is recommended that he/she be placed in a CWS stage, and for purpose of the FASP, the "no caretaker" box is to be checked.

B. Welfare Management System (WMS)

No system changes have been made to WMS, as Preventive Services and Foster Care POS lines can already be authorized up to 21 years of age. However, as foster care and preventive cases cannot be opened in WMS independent of CONNECTIONS, note CONNECTIONS instructions above.

C. Child Care Review Services (CCRS)

The following new CCRS legal event codes should be used to report the court proceedings of former foster care youth.

Type of Legal Event (Modifier A) codes:

- a) **22** =Article 10-B 18+ Re-Entry to Foster Care
 - Requires a previous M990 (Child Placement Ended) movement code
 - The L300 activity date must be greater than the activity date of the M990
- b) **23** =Article 10-B 18+ Permanency Hearing Review
 - Requires previous L300 with MOD A of 22

D. Benefits Issuance and Control System (BICS)

Appropriate claiming / reimbursement is dependent on system entered documentation that Legal Authority is in effect (L300 w/MOD A of 22/23).

E. Medicaid

All children who are in the care and custody of LDSS and who are citizens or have satisfactory immigration status are categorically eligible for Medicaid.

System instructions have been issued under GIS 11-001 Re-Entry of Former Foster Care Youth 18 to 21 years of age. This may be found at:
<http://ocfs.state.nyenet/it/GeneralResources/GeneralResourcesDefault.asp>.

VI. Additional Information

This new law adds to the definition of a destitute child in the Social Services Law Article 6 Title 1 “Care and Protection of Children” § 371. The definition of a “destitute child” now includes a former foster care youth under the age of 21 who was discharged from care due to failure to consent to continuation of placement.

The OCFS Transition Plan Form Part One / Transition Plan Discussion (OCFS-4922) and Transition Plan Form Part Two / Transition Plan Update and Summary (OCFS 4923) have been updated to assist in meeting and documenting the requirements of this act. Both forms are available on the Office of Children and Family Services (OCFS) internet and intranet sites, under Forms (Foster Care), at the following respective links: <http://www.ocfs.state.ny.us/main/forms> and <http://ocfs.state.nyenet/admin/Forms>.

The Eligibility Manual for Child Welfare Programs has been updated to reflect the requirements of this act.

VII. Effective Date

This release is effective retroactive to November 11, 2010.

/s/ Nancy W. Martinez

Issued By:

Name: Nancy W. Martinez

Title: Director

Division/Office: Strategic Planning and Policy Development

Attachment A

Written Notice for Youth Aging Out of Foster Care (Model)

A. Notice

1. If you have exited foster care on final discharge status at age 18 (or over) because you did not consent to continue foster care placement, or you have been discharged at age 18 or older to permanency (returned home; went to a relative’s care, custody or guardianship; or was adopted) and that permanency arrangement has been disrupted or dissolved, you have the right to ask to re-enter foster care provided you are under the age of 21.
2. You may only request to re-enter foster care *twice* before you turn 21. Some examples of why you might wish to return to foster care are: you have become homeless and have no other suitable living arrangement, or you do not have any income and are unable to pay your rent.
3. You will only be permitted to return to care under the following circumstances:
 - a.) your request to re-enter foster care is no later than 24 months after you were discharged from foster care on final discharge status,
 - b.) you have no suitable place to live, and
 - c.) you consent to enrolling in and attending an appropriate educational or vocational program.
4. You have a right to receive preventive services to avoid placement in foster care.
5. You may contact your attorney, former agency or local department of social services to request to re-enter foster care.
6. You should contact your attorney when you have contacted the department of social services and the department does not agree to return you to foster care.

B. Contact Information for Your Attorney

Name: _____

Mailing address: _____

Phone Number: _____

C. Acknowledgement of Receipt

I have read this notice, it has been explained to me and I understand it. I have been given a completed copy of this notice.

Signature of Youth

Date

Signed in the presence of:

Signature of Witness

Date

RE-ENTRY INTO FOSTER CARE FOR YOUTH AGE 18 AND OVER ELIGIBILITY CHECKLIST**Instructions:** Complete a separate form for each child re-entering foster care**SECTION I. CASE INFORMATION**

Case Name	Child's Name (Last, First, Middle Initial)	Unit/Worker Number	
DOB: __/__/__	Child's CIN (Optional)	Date of Re-entry: __/__/__	Case Number S
FA/SN Clearance Date __/__/__ FA/SN Recipient <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> WMS Screen Print <input type="checkbox"/> FA/SN ABEL Budget	SSI Clearance Date __/__/__ SSI Recipient <input type="checkbox"/> Yes <input type="checkbox"/> No		

SECTION II. TITLE IV-E ELIGIBILITY

Date Petition Filed: __/__/__; OR Date of Order to Show Cause: __/__/__	Date of Re-entry into Foster Care: __/__/__
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CHILD MUST MEET ALL REQUIREMENTS BELOW FOR TITLE IV-E ELIGIBILITYIf any of the responses to Questions 1-6 are NO, child is **NOT** Title IV-E Eligible**1. AGE.** Was the child between the ages of 18 and 21 when s/he re-entered foster care?

- YES – Continue to #2.
 NO – **Child not Title IV-E eligible.** ☞ Go to **Question 7** and indicate ineligible for Title IV-E.

If yes, identify source of Documentation: _____. Documentation in Child's Case File: _____.

2. CITIZENSHIP. Is the child a citizen of the United States or a qualified immigrant as defined under the federal PRWORA documentation requirements for citizenship or legal immigration status?

- YES – Continue to #3.
 NO - **Child not Title IV-E eligible.** ☞ Go to **Question 7** and indicate ineligible for Title IV-E.

If yes, identify source of Documentation: _____. Documentation in Child's Case File: _____.

3. LEGAL AUTHORITY. Did the child re-enter foster care as a result of a court order pursuant to Article 10-B of the FCA and does the placement court order transfer custody to the Commissioner of the LDSS/ACS?

Date of court order: __/__/__ Docket #: _____.

- YES, Continue to #4
 NO – **Child not Title IV-E eligible.** ☞ Go to **Question 7** and indicate ineligible for Title IV-E.

If yes, identify source of Documentation: _____. Documentation in Child's Case File: _____.

4. CONTRARY TO THE WELFARE/BEST INTERESTS. Does the initial court order sanctioning/directing re-entry of the child into foster care explicitly state that the court made a finding to the effect that continuation in the current living situation would be “contrary to the welfare” of the child or that re-entry into foster care was in the “best interests” of the child; **OR** if the child is re-entering foster care within six months of final discharge from the previous foster care episode, was there a “contrary to the welfare/best interests” finding in that initial placement order?

- YES – Court order sanctioning/directing re-entry contains this language - Continue to #5; **or**
- YES – Child is returning within six months of final discharge from a previous foster care episode and the initial placement order from the previous episode contains this language – Continue to #5.
- NO - **Child not Title IV-E eligible.** ☞ Go to **Question 7** and indicate ineligible for Title IV-E.

If yes, identify source of Documentation: _____ . Documentation in Child’s Case File: _____ .

5. REASONABLE EFFORTS. For a court order sanctioning/directing re-entry into foster care, is there a case specific determination by the court expressly stipulated in the court order issued within 60 days from the date the child re-entered foster care to the effect that the local district made “reasonable efforts” to prevent re-entry into foster care? Such finding may reflect that the social services district made reasonable efforts to meet the child’s needs prior to re-entry into foster care or that, where appropriate, no efforts were reasonable; **OR** if the child is re-entering foster care within six months of final discharge from the previous foster care episode, was there a “reasonable efforts” finding issued by the court within 60 days from the date the child entered foster care in the previous foster care episode?

- YES – The court issued an order within 60 days of the child re-entering foster care that contains this language – Continue to #6; **or**
- YES – Child is returning within six months of final discharge from the previous foster care episode and the court issued an order with such language within 60 days of the placement in the previous foster care episode – Continue to #6;
- NO – **Child not Title IV-E eligible.** ☞ Go to **Question 7** and indicate ineligible for Title IV-E.

If yes, identify source of Documentation: _____ . Documentation in Child’s Case File: _____ .

6. AFDC ELIGIBILITY. Would the *child* have been financially eligible for AFDC based on the circumstances that existed in the *child’s* current living situation or the *child’s* income during the month the court proceedings were held based on the rules in effect as of July 16, 1996?
(**Note:** Parental Deprivation and Living with Specified Relative criteria are deemed to have been met.)

- YES - Continue to #7.
- NO - **Child not Title IV-E eligible.** ☞ Go to **Question 7** and indicate ineligible for Title IV-E.

If yes, identify source of Documentation: _____ . Documentation in Child’s Case File: _____ .

7. CHILD’S ELIGIBILITY
 Yes – Child eligible for Title IV-E.
 No – Child not eligible for Title IV-E

Re-entry into Foster Care (Youth Age 18 and Over)

Program/Funding Implications:

Chapter 342 of the Laws of 2010 permits a former foster youth who exited foster care on a final discharge status at age 18, 19 or 20 to re-enter foster care under certain circumstances, provided the youth is under the age of 21.¹ The law gives youth aging out of foster care the opportunity to re-enter foster care when no reasonable alternative exists and the youth has had a final discharge from care due to:

- A failure to consent to a continuation of placement: or
- Discharge at age 18 or older to permanency (returned home, went to a relative's care, custody or guardianship, or was adopted) and that permanency arrangement has been disrupted or dissolved.

Chapter 342 applies to youth whose prior episode of care was initiated through a juvenile delinquency (JD) or person in need of supervision (PINS) proceeding under Article 3 or 7 of the Family Court Act, respectively, if such youth are otherwise eligible under Chapter 342. All provisions of Chapter 342 accordingly would apply to such youth who re-enter care, including the notice required when the youth leaves care due to failing to consent to a continuation of placement or being discharged to permanency.

The LDSS/ACS is required to provide notice to a youth who is aging out of foster care of his/her right to request that the LDSS/ACS petition the Family Court to return him/her to foster care, provided s/he is under age 21. In addition, the notice must inform the youth that s/he also may petition the court to return to foster care. The LDSS/ACS or youth petitioning the court must prove that no reasonable alternative to foster care exists.

Title IV-E reimbursement will be available for youth re-entering foster care after attaining the age of 18 if they meet the criteria on the *Re-entry into Foster Care for Youth Age 18 and Over Eligibility Checklist (LDSS-4415 rev. 11/10)*.

Notification Requirement

The LDSS/ACS is required to tell the youth and provide written notification to all youth who are aging out of foster care due to a failure to consent to a continuation of placement or discharge to permanency of their right to apply to re-enter foster care. The notice must inform the youth that s/he also may petition the court to return to foster care. In addition, the notice must:

1. Advise the youth that the application to return to foster care must be done within 24 months of the youth's first final discharge, provided the youth is under age 21;

¹ See 11-OCFS-ADM-02 for details.

2. Inform the youth that re-entry into foster will only be available where the youth has no reasonable alternative to foster care and consents to enrollment in and attendance at an appropriate educational or vocational program, unless evidence is submitted that such enrollment or attendance is unnecessary or inappropriate, given the particular circumstances of the child; and
3. Include the name and contact information of the youth's attorney.

In addition to the above, the LDSS/ACS must document the date the notice was provided in the youth's Transition Plan,² or in the event of an unplanned discharge, in the case record. The LDSS/ACS must make every effort to provide notice to the youth in person. If this is not possible, the notice must be sent to the youth's discharge address.

Required Preventive Services

The eligibility for preventive services of a youth requesting to re-enter care is the same as any other foster care youth under SSL section 409-a. The LDSS/ACS must provide preventive services to any youth requesting to re-enter foster care when providing the preventive services may avoid the youth returning to care. If a lack of adequate housing, for example, is a factor that will cause the re-entry of a youth into foster care, preventive services could include special cash grants in the form of rent subsidies, including rent arrears, or any other assistance, sufficient to obtain adequate housing. Chafee Independent Living Program funds are another option that can be used for making room and board payments.

The LDSS/ACS' efforts must be sufficient to obtain a reasonable efforts order if the child should subsequently enter foster care. Such order is necessary to claim and be reimbursed under Title IV-E.

Former foster care youth are only eligible to return to foster care if the motion to the court is filed within 24 months of the date of the first final discharge. Preventive service providers should evaluate youth before they reach the 24-month mark to determine if preventive services are meeting the needs of the youth or if it is in the best interest of the child to petition the court to return the child to foster care.

Documenting Court Proceedings

The LDSS/ACS, or a former foster care youth, may make a motion to the Family Court for the youth to re-enter foster care. The court motion must be filed within 24 months from the date of the first final discharge that occurred on or after the youth's 18th birthday providing the youth is under age 21. If the LDSS/ACS refuses to file a motion to return a youth to foster care, the youth has the right to file a motion with the court.

² To access the latest Transition Plan, go to <http://www.ocfs.state.ny.us/main/forms/fostercare>

1. The LDSS/ACS' Motion to the Court

The LDSS/ACS affidavit must show:

- The youth has no reasonable alternative to foster care;
- The youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless evidence is submitted that such enrollment or attendance is unnecessary or inappropriate, given the circumstances of the child;
- Re-entry is in the "best interests" of the youth; and
- The youth consents to the re-entry into foster care.

2. Former Foster Care Youth Motion to the Court

An affidavit or other evidence provided to the court and the social services official must show:

- The requirements outlined in the above three bullets are met; and
- The LDSS/ACS consents to the re-entry of the youth, or if the LDSS/ACS refuses to consent to the re-entry of the youth and that refusal is unreasonable.

3. LDSS/ACS Refusal to Consent

The court can overrule the LDSS/ACS' refusal to consent to allow the youth to re-enter care. If the LDSS/ACS refuses to consent, the court shall determine that the refusal is unreasonable if:

- The youth has no reasonable alternative to foster care;
- The youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless the court finds a compelling reason that such enrollment or attendance is unnecessary or inappropriate; and
- Re-entry into foster care is in the "best interests" of the youth.

4. Temporary Order to Return a Youth to Foster Care

If at any time during the pendency of the court proceedings, the court finds a compelling reason that it is in the "best interests" of the youth to return the youth to the care of the LDSS/ACS, the court may issue a temporary order.

Returning a Youth to Foster Care a Second Time

The court may grant only two separate re-entries to foster care. If the court has previously granted a motion to return a youth to foster care, the court must meet the requirements outlined previously in Section 1 or 2 above under the Documenting Court Proceedings heading, and:

- Determined that there is a compelling reason to return the youth to care; and
- Considered the youth's compliance with previous orders of the court, including the youth's previous participation in an appropriate educational or vocational program.

Title IV-E Foster Care Requirements

When it is in the best interest of the youth, the youth being returned to foster care following an interruption of care should be placed with the foster care parents with whom the youth was last placed, even if the placement exceeds the capacity of the foster home [SSL Section 398.6(n)]. The county of origin is responsible for placing the youth, regardless of the county the youth currently residing in or was previously placed in.

This law requires that all regular foster care requirements that apply to youth under age 18 also apply to youth over age 18. This includes but is not limited to: making the necessary case work contacts with the child, parents or relatives and caretaker,³ providing comprehensive medical and health services,⁴ and making assessments for parental support.⁵

The permanency requirements for former foster care youth re-entering care are the same as for all foster care youth. After granting the motion to return a youth to foster care, the court will set a date for a permanency hearing no later than 30 days after the hearing in which the motion was granted.

Required Steps in Determining Eligibility

Completing the *Re-entry into Foster Care for Youth Age 18 and Over Eligibility Checklist (LDSS-4415 rev. 11/10)* is the first step in determining eligibility for youth ages 18, 19 and 20 re-entering foster care. Complete a separate *Checklist* for each youth. (See *Appendix A* for a sample copy of the *Checklist*.)

Notes:

- **No determination of TANF-EAF is to be made for any re-entry youth so that they are not at risk of using any portion of their five year time limit on temporary assistance.**
- **For youth re-entering foster care within six months of the previous episode, the contrary to the welfare/best interests and reasonable efforts findings from the initial placement order for that previous foster care episode will meet the criteria for the re-entry episode. To claim Title IV-E for a child who otherwise satisfies the other Title IV-E standards, the court order must be in place.**
- **The county of origin is responsible for payment if the child re-enters foster care regardless of the county the youth currently resides in or is placed in. If a youth returns to an agency requesting to re-enter foster care, the agency is required to notify the LDSS/ACS.**

³ See 18 NYCRR 441.21, Casework Contacts.

⁴ See 18 NYCRR 441.22, Health and Medical Services.

⁵ See 18 NYCRR 422, Parental Support of Children Receiving Foster Care.

- Youth whose prior episode of care was initiated through a JD (Article 3 of the FCA) or PINS (Article 7 of the FCA) proceeding are able to re-enter foster care after reaching age 18 if otherwise eligible under Chapter 342. The petition and supporting documentation must be filed and the court's order granted for such youth under Section 1091 of the FCA, as added by Chapter 342. Youth who are placed in the custody of OCFS including youth placed in voluntary agencies or OCFS facilities, are not eligible for re-entry under this law.

To be eligible for Title IV-E, the youth must meet all six eligibility requirements and each must be appropriately documented:

- Age
- Citizenship
- Legal Authority
- Contrary to the Welfare/Best Interests
- Reasonable Efforts
- AFDC Eligibility

👉 Title IV-E may be claimed if and when it can be documented. Title IV-E may not be claimed until all eligibility requirements are satisfied!

These Title IV-E requirements are discussed below in the order that they appear on the *Re-entry into Foster Care for Youth Age 18 and Over Eligibility Checklist (LDSS-4415 rev. 11/10)*. Included in the discussion are instructions for completing the *Checklist* in its entirety and detailed explanations for each requirement followed by the acceptable documentation. These instructions have been formatted to follow completion of the *Checklist*. (See *Appendix A* for a sample copy of the *Checklist*.)

👉 Please note that there are designated lines immediately following the requirement to enter the source and location of documentation. Entries are required in these areas.

The symbol → indicates a direction to enter information. When necessary, the instructions are followed by an **Explanation** of the item and the **Documentation** required. Remember to complete a separate *Checklist* for each youth (over age 18 and under age 21) re-entering foster care. Each *Checklist* item is circumscribed in a box.

It is strongly recommended that the Checklist with the attached documentation be kept in a separate, identified section of the case record that is maintained for eligibility purposes. Please note that this case record is confidential and must be protected to prevent exposure of the youth's information to anyone other than personnel authorized by law.

Section I. Case Information

- Enter the Case Name; Child's Name (Last, First, Middle Initial); Unit/Worker Number; Date of Birth (DOB); Child's Client Identification Number (CIN) (optional); and Case Number.
- Enter the Family Assistance (FA) or Safety Net (SN) Clearance Date.
- Check YES or NO regarding whether the child is a FA/SN Recipient.
- Check the Welfare Management System (WMS) Screen Print box if included in the case record.
- Check FA/SN Automated Budget Eligibility Logic (ABEL) Budget box, if included in the case record
- Enter the Supplemental Security Income (SSI) Clearance Date.
- Check YES or NO regarding whether the child is an SSI Recipient.

Explanation:

Use the most accurate data available for entering information. The Welfare Management System (WMS) Family Assistance/Safety Net (FA/SN) clearance (if available) contains reliable demographic data. See also court documents for date of birth. Receipt of Supplemental Security Income (SSI) can be checked on the State Data Exchange (SDX).

Section II. Title IV-E Eligibility

- Enter the Court Petition Filed Date **or** the Date of the Order to Show Cause
- Enter the Date of Re-entry into Foster Care

Explanation:

The court petition filed date is the date the court petition was filed and the date of the order to show cause is the date the order was signed that lead to or directed the youth to re-enter foster care. Remember, the court motion must be filed within 24 months from the date of the first final discharge that occurred on or after the youth's 18th birthday provided the youth is under age 21.

The date of re-entry into foster care is the date the youth re-enters foster care.

**Child Must Meet All Requirements Below for Title IV-E Eligibility:
If any of the responses to Questions 1-6 are "NO," child is NOT Title IV-E eligible**

1. Age. Was the child between the ages of 18 and 21 when s/he re-entered foster care?

- Check YES if the child is between the ages of 18 and 21 years.
- Check NO if the child is not between the ages of 18 and 21 years. Child is not Title IV-E eligible. ☞ Go to **Question 7** and indicate ineligible for Title IV-E.

Explanation:

To be eligible for Title IV-E under Chapter 342 of the Laws of 2010, a child must be at least age 18 but less than age 21 and be re-entering foster care after a final previous discharge from foster care. If the child re-entering foster care is age 17 years or younger, please use the *Initial Foster Care Eligibility Checklist (LDSS-4809)/Automated Eligibility Checklist*.

Acceptable Documentation:

- Non-services WMS screen reflecting the child's date of birth
- Birth certificate⁶
- Baptismal certificate
- Hospital Records
- U.S. Passport
- Naturalization certificate
- Court records
- School records
- Family Assessment and Service Plan (FASP)/Progress notes that substantiate one of the above certificates was seen by the caseworker—should include the child's name, date of birth, parents' names and type of certificate or certificate number, if available

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

2. Citizenship. Is the child a citizen of the United States or a qualified immigrant as defined under the federal PRWORA documentation requirements for citizenship or legal immigration status?

- Check YES if the child is a U.S. citizen or a qualified immigrant.
- Check NO if the child is not a U.S. citizen or a qualified immigrant. Child is not Title IV-E eligible. ☞ Go to **Question 7** and indicate child is ineligible for Title IV-E.

⁶ See *10-OCFS-INF-10* for details regarding birth certificates from Puerto Rico.

Explanation:

A recipient of Title IV-E must be a citizen of the United States or a qualified immigrant as defined by the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).

Citizenship or immigration status of any child in foster care must be verified regardless of whether Title IV-E Foster Care payments are made on their behalf. (See *Appendix B* for list of United States Citizen and Immigration Services [USCIS] documents).

Acceptable Documentation:U.S. Citizen

- Birth certificate⁷
- U.S. Passport
- Court Records
- Naturalization certificate

Qualified Immigrant

- WMS Case Composition screen showing child receives Family Assistance (FA), Medical Assistance (MA),⁸ Home Energy Assistance Program (HEAP) or Food Stamps (FS)
- Documents from the United States Citizen and Immigration Services (USCIS)
- Court Records

See *Appendix B* for the *Immigration Status List*

 **Notes:** You cannot rely on an individual's receipt of Safety Net Assistance as documentation of qualified immigrant status, as there are additional groups of immigrants who can qualify for Safety Net, which is a State program.

All children in foster care except for non-qualified immigrants are categorically eligible for Medicaid and do not require a separate determination for Medicaid (MA) (Title XIX).

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

⁷ See *10-OCFS-INF-10* for details regarding birth certificates from Puerto Rico.

⁸ **Medicaid Exception:** State and local Medicaid eligibility for otherwise eligible immigrants is not dependent on whether the immigrant is a qualified immigrant or non-qualified immigrant or the date on which the immigrant entered the U.S. as outlined in PRWORA. State and local Medicaid coverage cannot be denied if an otherwise eligible immigrant is permanently residing in the U.S. under Color or Law (PRUCOL) or is a lawfully admitted permanent resident. Also, federally funded Medicaid may be granted to otherwise eligible undocumented immigrants for emergency services only. Pregnant women are not required to document citizenship or immigration status in order to be eligible for Medicaid. These individuals can be identified on **upstate** WMS by category codes: **38** (Alien FP-Emergency Only); **37** (Alien FNP-Eligible MA-Does Not Meet PRWORA); and **76** (Legal Aliens-Eligible MA-Does Not Meet PRWORA). On **downstate** WMS, the individuals are identified by alien code **E** (Undocumented Aliens-Emergency MA Only) or State/federal charge codes: **60** (TANF Ineligible Alien) and **67** (Qualified Alien in the Five Year Ban for Medicaid/PRUCOL).

3. Legal Authority. Did the child re-enter foster care as a result of a court order pursuant to Article 10-B of the FCA and does the placement court order transfer custody to the Commissioner of the LDSS/ACS?

→ Enter the date the court order was signed on the designated line

→ Enter the Docket # on the designated line

→ Check YES if the placement court order directs the child back into foster care; **or**

→ Check NO if the placement court order does not direct the child back into foster care. ☞ Go to **Question 7** and indicate child is ineligible for Title IV-E.

Explanation:

Court-ordered Re-entry into Foster Care

A child who has attained the age of 18 may only re-enter foster care on a court order that directs him/her back into foster care. Such order returns the child to the custody of the Commissioner of the LDSS or ACS.

Acceptable Documentation:

- A court order (or court transcript) that places the child in the care and custody or the custody and guardianship of the Commissioner of the LDSS/ACS

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

4. Contrary to the Welfare/Best Interests. Does the initial court order sanctioning/directing re-entry of the child into foster care explicitly state that the court made a finding to the effect that continuation in the current living situation would be "contrary to the welfare" of the child or that re-entry into foster care was in the "best interests" of the child; **OR** if the child is re-entering foster care within six months of final discharge from the previous foster care episode, was there a "contrary to the welfare/best interests" finding in that initial placement order?

→ Check YES if the court order sanctioning/directing re-entry into foster care indicates that continuation in the current living situation would be "contrary to the welfare" of the child; **or**

→ Check YES if the court order sanctioning/directing re-entry into foster care indicates that re-entry into foster care is in the "best interests" of the child; **or**

→ Check YES if the child is re-entering foster care within six months of final discharge from a previous foster care episode and the initial placement order from the previous foster care episode contains this language;

→ Check NO if none of the above legal circumstances apply to the child. Child is not Title IV-E eligible. ☞ Go to **Question 7** and indicate child is ineligible for Title IV-E.

Explanation:

The court order sanctioning/directing the re-entry of the child into foster care must explicitly state that the court made a finding to the effect that continuation in the current living situation would be "contrary to the welfare" of the child or that re-entry into foster care was in the "best interests" of the child; **or** if the child is re-entering foster care within six months of final discharge from the previous episode of foster care there must be a "contrary to the welfare/best interests" finding issued by the court in that initial placement order.

Acceptable Documentation:

- A court order (or court transcript) of the court determination sanctioning re-entry into foster care that explicitly states it would be "contrary to the welfare" of the child to remain in the current living situation or it would be in the "best interests" of the child to return to foster care; **or**
- If the child is re-entering foster care within six months of final discharge from a previous foster care placement, a copy of the initial placement order issued by the court that contains the "contrary to the welfare/best interests" language.

 **Note:** For eligibility purposes only: If the LDSS/ACS has a reliable process in place in which the court orders and determinations in those orders are summarized on a separate document for the purpose of informing casework staff of court events, you may use the information in the summary in completing the *Checklist*. This summary material should be completed only by trained individuals who understand the contents of the court order, have reviewed it, and understand the requirements of Title IV-E eligibility. **In no event can the summary material be used to document eligibility for federal review purposes.**

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

5. Reasonable Efforts. For a court order sanctioning/directing re-entry into foster care, is there a case specific determination by the court expressly stipulated in the court order issued within 60 days from the date the child re-entered foster care to the effect that the LDSS/ACS made "reasonable efforts" to prevent re-entry into foster care? Such finding may reflect that the LDSS/ACS made "reasonable efforts" to meet the child's needs prior to re-entry into foster care or that, where appropriate, no efforts were reasonable; **or** if the child is re-entering foster care within six months of final discharge from the previous foster care episode, was there a "reasonable efforts" finding by the court within 60 days from the date the child entered foster care in the previous foster care episode?

→ Check YES if the court issued an order within 60 days of the date the child re-entered foster care to the effect that the LDSS/ACS made "reasonable efforts" to prevent re-entry into foster care **or** to meet the child's needs prior to re-entry into foster care **or** that no efforts were reasonable; **or**

→ Check YES if the child is returning within six months of final discharge from the previous foster care episode and the court issued an order with a "reasonable efforts" finding within 60 days of the placement in the previous foster care episode;

→ Check NO if there is not an appropriate court order with such language. Child is not eligible for Title IV-E.  Go to **Question 7** and indicate child is ineligible for Title IV-E.

Explanation:

For a court order sanctioning/directing re-entry into foster care, there must be a case specific determination by the court expressly stipulated in the court order, and issued within 60 days from the date the child re-entered foster care, that the LDSS/ACS made "reasonable efforts" to prevent re-entry into foster care. This finding may reflect that the

LDSS/ACS made "reasonable efforts" to meet the child's need prior to re-entry into foster care or that, where appropriate, no efforts were reasonable; **or** if the child is re-entering foster care within six months of final discharge from the previous foster care episode, there must be a "reasonable efforts" finding issued by the court within 60 days from the date the child entered the previous foster care episode.

Trial Discharge

Trial discharge for youth between ages 18 and 21 may be extended at each scheduled permanency hearing, provided the youth consents to the extension. As in current regulation 18 NYCRR 430.12(f) (4) and the program instructions of the Administration for Children and Families ACYF-CB-PI-10-11 multiple trial discharges approved by the court are permitted consistent with the needs of the child.

Note: If the child has been on a trial discharge status for more than six months and the court has not extended trial discharge status for the child, a new Title IV-E eligibility determination must be made upon re-entry into foster care.

Acceptable Documentation:

- A court order (or court transcript) issued within 60 days of the child re-entering foster care that states that the Title IV-E Agency made "**reasonable efforts**" to prevent re-entry into foster care, or the Agency made "**reasonable efforts**" to meet the youth's needs prior to a return to foster care or where appropriate, that **no efforts were reasonable**; **or**
- With regard to the previous episode of foster care, if the child is re-entering foster care within six months of final discharge, a copy of the original placement order issued by the court that contains the "**reasonable efforts**" language or a court order which contains a brief statement of the facts upon which the court based its "reasonable efforts were made to prevent removal" finding is acceptable. Also acceptable is where the court makes a reasonable efforts finding and cross-references documentation, such as a petition or report, or testimony upon which the court based its finding

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

6. AFDC Eligibility. Would the **child** have been financially eligible for AFDC based on the circumstances that existed in the **child's** current living situation or the **child's** income during the month the court proceedings were held based on the rules in effect as of July 16, 1996? (**Note:** Parental Deprivation and Living with Specified Relative criteria are deemed to have been met.)

→ Check YES if financial eligibility for AFDC as described above is met and documented.

→ Check NO if financial eligibility for AFDC as described above is not documented. Child is not Title IV-E eligible. ☞ Go to **Question 7** and indicate child is ineligible for Title IV-E.

Explanation:

AFDC Program Criteria

A child/youth must have met the AFDC eligibility requirement per section 472(a) (3) of the Act at the time of removal from the home to be eligible for Title IV-E Foster Care. For a youth age 18 or older who is re-entering foster care after attaining age 18, consistent with the criteria above, AFDC eligibility is based on the youth without regard to the parents/legal guardians or others in the assistance unit in the home from which the youth was removed as a younger child (e.g., a child-only case).

👉 **Note: Based on guidance from the federal government where a youth re-enters foster care after the age of 18, the requirements for Parental Deprivation and Living with Specified Relative are deemed to have been met.**

Acceptable Documentation:

- WMS screen printout
- ABEL Budget
- Pay stub for the child

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

7. Child Eligibility.

→ Check YES if all the answers to questions 1 through 6 are YES. Child is Title IV-E eligible.

→ Check NO if any of the responses to questions 1 through 6 are NO. Child is not eligible for Title IV-E.