

	GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES MEDICAID POLICY MANUAL			
	Chapter:	2800	Effective Date:	November 2020
	Policy Title:	Legal Status		
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REQUIREMENTS

Legal responsibility and care for a child must be given to DFCS or another public agency under contract with Georgia Department of Human Services before Title IV-E eligibility can be established.

BASIC CONSIDERATIONS

A child must enter care pursuant to a court order or a Voluntary Placement Agreement.

Court Ordered Removal

There are two types of court orders:

- Permanent - issued when parental rights are severed
- Temporary - issued from the date of removal.

To establish IV-E eligibility, the first court order signed by a judge which sanctions the removal of the child from the home; e.g., the order that is issued as a result of the 72-hour hearing, a Shelter Care Order, Emergency Removal Order, etc. must have the appropriate judicial finding of “*contrary to the welfare*”/”*best interest of the child*”. The finding should be explicitly documented in the court order and made on a case-by-case basis; that is, based on the individual circumstances/facts of the case that led the judge to conclude to the finding. The order must enumerate the specific facts of the case or reference the facts contained in such documents as the complaint, petition, etc.

If the required language is not in the initial judicial determination, the child will never be IV-E eligible (or IV-E reimbursable) at any time during that placement episode.

BASIC CONSIDERATIONS**Court Ordered Removal**

There must be a court order within 60 days of the child's removal that contains a judicial determination to the effect that "*reasonable efforts were made to prevent removal of the child*" or that "*reasonable efforts were not required to prevent removal of the child from the home*". These orders may be known by various names such as the Detention, Shelter Care, Adjudication, Dispositional, Temporary Custody Orders, etc. The child cannot be determined IV-E eligible until "*reasonable efforts*" language is obtained. If the "*reasonable efforts*" language is not obtained within 60 days of the child's removal date, the child is not eligible for IV-E during that placement episode.

Affidavits and *nunc pro tunc* order or orders referencing the judicial court code are not acceptable for meeting the "*contrary to the welfare*" or "*best interest*" judicial language requirement. *Nunc Pro Tunc* orders are court orders that give retroactive effect to a judicial finding included in the order; the purpose of which is to clear up omissions in a previous court order that were inadvertently excluded. The required language must be stated in the initial court order. If a *nunc pro tunc* order was issued; i.e. the order is signed after the 60 days, but the judge's signature (and not the findings of the court) reference back to the actual date of the hearing, then the language requirement is met.

NOTE: Electronic or digital signatures for a judge's signature are acceptable.

Court Ordered Removal, Voluntary Placement

A Voluntary Placement Agreement is a signed written agreement between DFCS and the parent(s) or the legal guardian(s) of the child. It specifies the legal status of the child, and the rights and obligations of the parent(s) or legal guardian(s) and the county DFCS while the child is in out-of-home placement. The agreement is limited to 90 days, with the possibility of one additional 90-day extension. No placement is reimbursable without legal authorization for custody. A VPA or court order must currently be in effect for reimbursement.

Federal law allows IV-E eligibility to continue for 180 days under a Voluntary Placement Agreement without a court order. If the child remains in care under a Voluntary Placement Agreement beyond 180 days without acquiring a court order which states that continued voluntary placement is in the "*best interest*" of the child, the child will lose IV-E eligibility on the 181st day and for the remainder of the placement episode.

For those children that enter DFCS care and responsibility via a Voluntary Placement Agreement, a judicial determination that "*reasonable efforts*" to prevent removal is not required for meeting IV-E eligibility.

Voluntary Relinquishment

Voluntary Relinquishment, also called Voluntary Surrender of parental rights, occurs when a parent voluntarily signs the child into foster care for the purpose of adoption. The child is surrendered to the Department of Human Services and the rights and duties of the county

BASIC CONSIDERATIONS (cont.)**Voluntary Relinquishment (cont.)**

DFCS are the same as if parental rights had been terminated in court. The parent loses all parental rights and responsibilities of the child. The parents may be obligated to pay child support until such time an adoption is finalized.

Foster Care: A child in this situation may only be IV-E Foster Care eligible if the child had last been living with the parent(s) within six months of the date court proceedings were initiated leading to a judicial determination that included “*contrary to the welfare*” and “*reasonable efforts*” language.

Adoption Assistance: An otherwise eligible child who had been living with the specified relative within six months of the date the court order proceedings were initiated leading to a judicial determination that included “*contrary to the welfare*” language will be eligible for IV-E Adoption Assistance. The “*reasonable efforts*” determination is not required for IV-E Adoption Assistance eligibility.

NOTE: Voluntary relinquishments or voluntary surrenders are only taken when adoption is a viable plan for the child. Refer to the Social Services Manual for additional information

Permanency Plan

A judicial determination of the agency’s activities to make reasonable efforts to finalize a child’s permanency plan is required within 12 months of the child’s removal and at least every 12 months thereafter while the child is in foster care. The State is not required to reconcile the permanency plan in effect at the time the judicial determination is due with the reasonable efforts determination itself. The courts may rule on the plan that is in effect at the time of the finding, a plan that has been in effect for a brief period of time, or the activities related to achieving permanency that took place over the prior 12 months, even if the plan had been abandoned during that 12-month period.

If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within the time frame prescribed, the child loses reimbursability under title IV-E at the end of the month in which the judicial determination was required to have been made and remains non-reimbursable until such a determination is made.