



AAICAMA FAQs Series

Medicaid and Title IV-E Adoption Assistance

1. **Is it mandatory for a child to receive Medicaid if the child is eligible for title IV-E adoption assistance?** (Is the same true for a child eligible for state-funded adoption assistance?)
2. **Are title IV-E recipients eligible for Medicaid in all states?**
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11. **Can Medicaid be terminated or suspended if a state attempts to withhold title IV-E adoption assistance payments while a child is in a Residential Treatment.**
12. **Is it possible for a title IV-E adoption assistance eligible child to receive Medicaid past the age of eighteen?**
13. **Does Medicaid eligibility end if a title IV-E adoption assistance eligible child's adoptive parent(s) dies, or the adoption dissolves?**
14. **Does a child's Medicaid eligibility continue if a child whose adoptive parent(s) die (or the adoption dissolves) is placed with an aunt and uncle who were made legal guardians under the deceased parent's will?**
15. **Which state is responsible for providing Medicaid to a title IV-E eligible child if the child's adoption dissolves while s/he is living outside the adoption assistance state— the adoption assistance state or the state in which the child currently lives?**

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16. Can an Interstate Compact on Adoption and Medical Assistance (ICAMA) member state require documentation of the title IV-E eligibility determination made by the adoption assistance state in addition to the ICAMA 6.01 form before providing Medicaid in an interstate case?
17. Which state is responsible for the provision of Medicaid while a title IV-E adoption assistance eligible child is visiting relatives out-of-state?

Answers

1. Question: Is it mandatory for a child to receive Medicaid if the child is eligible for title IV-E adoption assistance?

Yes, it is mandatory for children to receive Medicaid if they are eligible for title IV-E adoption assistance. Individuals eligible for title IV-E adoption assistance are in a Medicaid eligibility group known as 'mandatory categorically needy'. This means that their receipt of Medicaid is automatic by virtue of their eligibility for title IV-E adoption assistance.

Note: A separate Medicaid application is unnecessary and precluded by law.

Cite: 42 U.S.C. §1396a (10)(A)(i)(I); 42 C.F.R. §§435.115(1), 435.145, 435.909 and 436.114.

Note: Medicaid is not an automatic benefit of state-funded adoption assistance. All states provide Medicaid to state-funded adoption assistance eligible children when the child resides/remains in the adoption assistance state. However, if a child is placed for adoption outside the state with custody of the child, or if a child moves out of state after placement, they are not guaranteed to receive Medicaid in the new state of residence. Many states provide Medicaid to resident children who have a state-funded adoption assistance agreement with another state, but some states do not.

2. Question: Are title IV-E recipients eligible for Medicaid in all states?

Yes, all title IV-E recipients are eligible for Medicaid in all states.

Title IV-E is what is known as a Medicaid 'mandatory categorically needy' eligibility group. This means that they are part of an eligibility group that all states are *required* to cover under the state's Medicaid State Plan. All title IV-E eligible children are mandatory eligible for Medicaid, regardless of which state is responsible for providing the IV-E assistance and which state is the state of residence. Title IV-E eligible children remain eligible for Medicaid so long as a title IV-E adoption assistance agreement is in effect or maintenance payments are being made under title IV-E foster care, kinship guardian assistance or a guardianship demonstration waiver.

***Response approved by CMS, September 2009**

Cite: 42 C.F.R. §§ 435.110, 435.115(e), 435.145, 435.403(g).

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3. Question: Can a State require a title IV-E eligible child to complete a Medicaid application before providing Medicaid services/issuing a Medicaid card?

No, a State cannot require a child who has an adoption assistance agreement in effect under title IV-E of the Social Security Act or who is receiving title IV-E foster care or guardianship assistance maintenance payments to complete a Medicaid application before the state provides Medicaid services.

Under federal Medicaid law, Title IV-E eligible children are “deemed to be receiving” Aid to Families with Dependant Children (AFDC) and are eligible for Medicaid as “mandatory categorically needy”. Title IV-E recipients are eligible to receive Medicaid in the state in which they live, even if it is not the state that provides the title IV-E assistance. A separate federal Medicaid law stipulates that the State agency cannot require a separate Medicaid application if the individual receives AFDC. Read together, the laws prohibit the practice of requiring a separate Medicaid application for a title IV-E eligible child. This is true for initial openings of Medicaid and for interstate transfers of Medicaid.

***Response approved by CMS, April 2010**

Cite: 42 CFR §§ 435.115(e), 435.145, and 435.909.

4. Can an adoption assistance eligible child maintain more than one Medicaid card?

Answer: No, an individual should not maintain more than one Medicaid card at a time. Medicaid is received through a child’s state of residence. An individual only has one legal residence at a time and only one state can claim federal reimbursement of a single Medicaid service. Therefore, a child is eligible for Medicaid in only one state at any one time and should have only one Medicaid card at a time.

Note: Every state has an automated Eligibility Verification System (EVS) that Medicaid providers may access by telephone, a card reader, and/or the internet to verify an individual’s Medicaid eligibility status on a date specified by the provider. It is recommended that providers use EVS to verify a patient’s Medicaid eligibility because it represents a recipient’s most current eligibility status.

Out-of-state providers may be enrolled in several states’ Medicaid programs, especially in border areas and are able to provide Medicaid through multiple states’ Medicaid programs. If State residency is disputed, the involved states must determine where the child lived on the date(s) of service for which a provider or managed care organization is requesting reimbursement. If this cannot be resolved, the state of residence is where the child was physically present on the date of service.

Cite: 42 U.S.C. §§ 673(b)(1) and 1396a(10)(A)(i)(I); 42 C.F.R. §§ 435.145, 435.403(g).

Cite: 42 C.F.R. §§ 431.52 and 435.403(g), (k), and (m).

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5. Question: Is it necessary for an adoption assistance maintenance payment to be made on behalf of a title IV-E adoption assistance eligible child in order for the child to receive Medicaid?

No, it is not necessary for a child to receive a Title IV-E adoption assistance maintenance payment in order to receive Medicaid. The law only requires that an adoption assistance agreement be in effect under Title IV-E of the Social Security Act, "whether or not adoption assistance is being provided".

Note: States have various names for an adoption assistance agreement with a maintenance payment of zero, e.g., 'deferred adoption assistance' and, 'Medicaid-only agreements'. This type of agreement allows the adoptive family an opportunity to activate assistance and/or add a maintenance payment after adoption finalization if there is a change in the needs of the child.

Cite: 42 CFR 435.115 (e)(1) and 435.145; 42 U.S.C. §§673(b) and 1396a(10)(A)(i)(I).

6. Question: Which state is responsible for providing Medicaid when a title IV-E adoption assistance eligible child is placed in a Residential Treatment Facility (RTF) outside the state in which they usually reside?

The state in which the RTF is located is required to provide Medicaid to the child during their stay. Federal law states that title IV-E adoption assistance eligible children are eligible to receive Medicaid from the state in which they *live*. Where a child lives can be different than where they reside. Residence is a legal term that is used to describe a physical presence in the state and intent to stay in the state. Under title IV-E law, title IV-E eligible children have a different definition of "resident", requiring only a physical presence. Therefore, a child is considered to be living in the RTF during their treatment period and the state in which the treatment facility is located is responsible for the provision of Medicaid.

Note: This answer also applies to residential educational placements and in-patient care out-of-state.

Cite: 42 U.S.C. §§ 673 (b)(1) and 1396a(10)(A)(i)(I); 42 C.F.R. §§ 435.145, 435.403(g).

Note: This is not the case for a state-funded adoption assistance eligible child. Medicaid is received through a child's residence. Residency is defined differently under Medicaid law for the two adoption assistance populations. Residency for state-funded adoption assistance eligible children is defined as the permanent residence that the child maintains and/or the residence state of the adoptive parent. In an interstate RTF placement for a state-funded adoption assistance eligible child, the placing state (where the child is considered to maintain residency status) continues to be responsible for the provision of Medicaid to the child while the child receives treatment in another state.

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7. Question: Is a new state of residence required to provide a particular Medicaid service to a child eligible for title IV-E adoption assistance because the child received the service under the Medicaid program in a previous state of residence?

No, a new state of residence is not required to provide a particular Medicaid service to a title IV-E adoption assistance eligible child simply because the child was receiving the service in a previous state of residence.

States provide services as listed in their Medicaid State Plan. If the child received a service in a previous state that is not in the current state's Medicaid Plan, the service cannot be received from the new state.* (*Note exception below: EPSDT.*)

There are mandatory Medicaid services that all states must provide and there are services that are optional under Medicaid. States can elect which, if any, optional services they will provide under their Medicaid program. It is possible for a child to have received an optional Medicaid service in one state and move to another state whose Medicaid program does not provide that service.

Practice issue: If the language of the adoption assistance agreement reads that the Medicaid services of the adoption assistance state are to be provided or the agreement specifies that a particular medical service would be provided, the adoption assistance state remains responsible for ensuring receipt of that service.

*Exception: Early and Periodic Screening, Diagnosis and Treatment (EPSDT) is one of the mandatory services of the Medicaid program. Under EPSDT, if a Medicaid service is deemed 'medically necessary' for a child to receive, states must cover the service, even if the service is not in the state's Medicaid State Plan.

Cite: 42 U.S.C. 1396d (a)(4)(B) and (r); 42 CFR 441 Subpart B.

8. Question: What is EPSDT?

Early and Periodic Screening, Diagnosis and Treatment (EPSDT) is one of the **mandatory services of the Medicaid program**. All states must provide EPSDT services to individuals under the age of 21 if the service is deemed 'medically necessary' for the child to receive—even when the service is not in the state's Medicaid State Plan. States must also make necessary exceptions to across-the board limits in amount, duration, and scope of services. This obligation is limited to mandatory and optional services potentially covered by the federal Medicaid program.

Note: The Medicaid program is administered by a federal agency, the Centers for Medicare and Medicaid Services (CMS), in partnership with the states. Information on the EPSDT program can be found on the CMS website at:

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<http://www.cms.hhs.gov/MedicaidEarlyPeriodicScrn/>.

Information includes the following regarding the EPSDT program: *Overview, EPSDT Benefits, and State Agency Responsibilities*.

Cite: 42 U.S.C. §§1396d (a)(4)(B) and (r); 42 CFR 441 Subpart B.

9. Question: If a child is Medicaid eligible in one state and moves to another state in which they are Medicaid *ineligible*, can the child receive a Medicaid service in the new state if the service is deemed medically necessary under EPSDT?

No, a child may not receive a Medicaid service in a state in which they are ineligible for the Medicaid program. EPSDT is not a separate program from Medicaid. EPSDT is a mandatory service under the Medicaid program. A child must be eligible for Medicaid to be able to receive any Medicaid service, including EPSDT.

Cite: 42 U.S.C. §1396 (a)(10)(A).

10. Question: Can Medicaid be terminated for a title IV-E adoption assistance eligible child if a family does not complete a redetermination of adoption assistance eligibility?

No, Medicaid cannot be terminated under title IV-E adoption assistance if a family does not complete a redetermination of adoption assistance eligibility. There is no federal requirement to assess title IV-E adoption assistance eligibility after the initial assessment made by the adoption assistance state. Medicaid for this population is based on eligibility for title IV-E adoption assistance and can be terminated *only* under the following three circumstances:

- a. Child has attained the age of eighteen (or, where the adoption assistance state determines that the child has a mental or physical handicap which warrants the continuation of assistance, the age of twenty-one)
- b. Parent(s) is no longer legally responsible for the support of the child (legal custody)
- c. Parent(s) is no longer providing any support* to the child

Since a failure to complete a redetermination of adoption assistance eligibility is not a listed circumstance for termination, title IV-E AA eligibility would continue and the child would remain Medicaid eligible and continue to receive services.

*Note: Support can be other than financial, such as providing items of clothing or maintenance of the child's room in the home.

Practice issue: Redetermination of Medicaid eligibility is not necessary for a title IV-E adoption assistance eligible child. Title IV-E confers automatic eligibility for Medicaid and

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a child's continued eligibility for the assistance program is confirmation of continued eligibility for Medicaid.

Cite: *42 U.S.C. 673 (a)(4)*.

11. Question: Can Medicaid be terminated or suspended if a state attempts to withhold title IV-E adoption assistance payments while a child is in a Residential Treatment Facility?

No, Medicaid cannot be terminated or suspended if a state attempts to withhold title IV-E adoption assistance payments while a child is in a Residential Treatment Facility. Title IV-E adoption assistance can be terminated only under three conditions. Title IV-E adoption assistance cannot be terminated, suspended, or discontinued for any other reason. Withholding adoption assistance payments due to a temporary placement outside the home, as in the circumstance of an RTF placement, is impermissible. As long as a parent continues to provide any support* to the child, the child remains eligible for title IV-E adoption assistance and is, therefore, Medicaid eligible.

*Note: Support can be other than financial, such as providing items of clothing or maintenance of the child's room in the home.

Cite: *42 U.S.C. 673 (a)(4)*.

12. Question: Is it possible for a title IV-E adoption assistance eligible child to receive Medicaid past the age of eighteen?

Yes, for children receiving title IV-E adoption assistance, Medicaid receipt is not considered separately from their adoption assistance eligibility. Adoption assistance eligibility is the basis for Medicaid eligibility for most title IV-E adoption assistance children.

The real question is, 'Can a child receive title IV-E adoption assistance past the age of eighteen?'

And the answer is, 'Yes, a child can receive title IV-E adoption assistance past the age of eighteen.'

It is the adoption assistance state's option to continue adoption assistance past the age of eighteen. If the adoption assistance state determines that a child has a mental or physical handicap that warrants the continuation of assistance, the state can continue assistance up to the age of 21. Since children who are title IV-E adoption assistance eligible are also eligible for Medicaid, the Medicaid would also continue in the state in which the child lives.

Question 12 updated 10.12.12

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13. Question: Does Medicaid eligibility end if a title IV-E adoption assistance eligible child's adoptive parent(s) dies, or the adoption dissolves?

Yes, Medicaid eligibility *through title IV-E adoption assistance eligibility* ends if a child's adoptive parent(s) dies, or the adoption dissolves *and the child is not readopted*. The child must be adopted to receive adoption assistance, and the Medicaid that accompanies it. The child may be eligible for Medicaid through another eligibility category, such as Supplemental Security Income for the Aged, Blind, or Disabled (SSI) under Title XVI of the Social Security Act or the State Children's Health Insurance Plan (SCHIP) under title XXI.

***Response approved by CMS, September 2009**

Cite: 42 U.S.C. 673 (a)(4), 42 U.S.C. §§1381-1383(f) and 42 U.S.C. 1397aa.

Practice issue: *In the event of the death of a parent*, if a child initially has two adoptive parents and the adoption assistance agreement includes the signatures of both parents, the name of the deceased parent can be removed from the agreement and adoption assistance can continue. If a child has only one adoptive parent and the agreement was completed with that parent (or two adoptive parents) and the parent(s) die, the child would need to be readopted and another adoption assistance agreement would have to be negotiated in a subsequent adoption. Note: Once determined to be adopted-assistance eligible under the federal program, a special needs child remains title IV-E adoption assistance eligible.

Practice suggestion: If the child initially has one adoptive parent, and that parent gains a partner or individual who adopts the child, the agreement can be updated with the signature and information of the second adoptive parent. This measure is a safeguard in the event that one of the parents dies and is survived by the second adoptive parent. In this way, the adoption assistance agreement can remain in effect and the child's benefits and services can continue uninterrupted.

14. Question: Does a child's Medicaid eligibility continue if a child whose adoptive parent(s) die (or the adoption dissolves) is placed with an aunt and uncle who were made legal guardians under the deceased parent's will?

No, Medicaid eligibility ends through title IV-E adoption assistance if a child's adoptive parent(s) dies, or the adoption dissolves *and the child is not readopted*. Legal guardianship is not adoption, so Medicaid through the adoption assistance program would end unless and until the child was readopted. The child may be title IV-E eligible under the Kinship Guardianship Assistance Program (GAP). Like all title IV-E programs, GAP eligibility carries with it mandatory Medicaid eligibility. Note: GAP is optional and not all states have elected the program.

A child in this circumstance may be eligible for Medicaid through another eligibility category/program, and the adoption assistance state staff can connect the child and

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family to other federal, state, or non-profit sources to find assistance. Examples include the following:

- State Children's Health Insurance Program (SCHIP)
Link: <http://www.cms.hhs.gov/home/schip.asp>
- Medicaid (income-based and other categorical eligibility)
Link: <http://www.cms.hhs.gov/home/medicaid.asp>
- Non-profit state or national support and advocacy organizations that address a child's specific special need(s) can assist adoptive families in locating and/or funding services. Examples:
Easter Seals, link: <http://www.easterseals.com>
Autism Society of America, link: <http://www.autism-society.org>
American Association on Intellectual and Developmental Disabilities,
link: <http://www.aamr.org>

15. Question: Which state is responsible for providing Medicaid to a title IV-E eligible child if the child's adoption dissolves while s/he is living outside the adoption assistance state—the adoption assistance state or the state in which the child currently lives?

The answer varies depending on circumstance. If the child enters care of a state at the time of disruption (i.e., the adoption process ends prior to finalization) or dissolution (i.e., the adoption fails after finalization), that state is responsible for the application for and determination of title IV-E adoption assistance eligibility in a subsequent adoption and the provision of Medicaid that would accompany that eligibility.

If a child does not enter custody of a state at the time of disruption or dissolution and is subsequently adopted, the state of the adoptive parents is responsible for the application and drafting of the agreement for title IV-E adoption assistance and the provision of Medicaid.

Cite: 42 U.S.C. 673 (a)(2)(C).

16. Question: Can an Interstate Compact on Adoption and Medical Assistance (ICAMA) member state require documentation of the title IV-E eligibility determination made by the adoption assistance state in addition to the ICAMA 6.01 form before providing Medicaid in an interstate case?

No, under the ICAMA, a member state should not require documentation of the title IV-E eligibility determination in addition to the ICAMA 6.01 form before providing Medicaid in an interstate case. Under the Compact, standard member practice and federal law, the adoption assistance state is designated as the state that determines eligibility. A completed ICAMA 6.01 accompanied by a copy of the fully executed adoption assistance agreement is all that is required of the sending state (the adoption assistance

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state) to send the receiving state (the resident state) in order for the resident state to provide Medicaid to a title IV-E adoption assistance eligible child.

Cite: The Interstate Compact on Adoption and Medical Assistance, Section E of the 6.01 ICAMA form, Certification (See also Section A. 6, Basis of Medicaid Eligibility.)

Note: Title IV-E adoption assistance eligible children are mandatory eligible for Medicaid. Their Medicaid receipt is an entitlement and cannot be delayed or denied due to state policy or practice. (See Question #1)

Cite: 42 U.S.C. §1396a (10)(A)(i)(I); 42 C.F.R. §§435.115(1), 435.145, 435.909 and 436.114.

17. Question: Which state is responsible for the provision of Medicaid while a title IV-E adoption assistance eligible child is visiting relatives out-of-state?

Medicaid responsibility stays with the original state if the absence is considered temporary. This is a frequent question from the states, particularly during the summer months. The question comes down to this- has the child's state of residence changed to that of the relative's during the stay? If a child is visiting its grandparent for three weeks, the answer would be "no". The child's original state (where the adoptive parents reside) would remain the child's state of residence and be responsible for any Medicaid expenses incurred during the out-of-state stay with relatives.

Residency determines state responsibility for the provision of Medicaid and title IV-E recipients have a distinct definition of residency. A title IV-E eligible child is considered a resident of where they *live*—which means the state in which the child is physically present. And although the child is now physically present in a different state in this scenario, the Medicaid responsibility stays with the original state if the absence is considered temporary.

There is no federal guidance on the number of days that constitute a temporary stay; it is a matter of judgment. Even if the adoptive mother asks the child's grandmother to care for her grandchild and both consider it a temporary arrangement, a case could be made that the child's residence has changed and grandma's state is now the legal residence and should assume Medicaid responsibility for the child if the stay becomes lengthy. In general, a child's summer vacation would be considered a temporary absence from their state of residence and that state would need to be contacted and coordinate with the state where the grandparent lived in order to cover any Medicaid expenses that arise during the child's visit.

See 42 U.S.C. 1396a(a)(16) and 42 C.F.R. 435.403(j)(3).

Note: **Cases of disputed residency.** If states cannot resolve which state is the state of residence for purposes of Medicaid, the state where the child is located is the state of residency and the state responsible for the provision of Medicaid.

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Cite: 42 C.F.R 435.403 (m).

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