

# Federal Definition of Foster Care and Related Terms

[Code of Federal Regulations] [Title 45, Volume 4, Parts 1200 to End] [Revised as of October 1, 2000]  
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Sec. 1355.20 Definitions.

**Child care institution** means a private child care institution, or a public child care institution which accommodates no more than twenty- five children, and is licensed by the State in which it is situated or has been approved by the agency of such State or tribal licensing authority (with respect to child care institutions on or near Indian Reservations) responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing. This definition must not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

**Detention facility** in the context of the definition of child care institution in section 472(c)(2) of the Act means a physically restricting facility for the care of children who require secure custody pending court adjudication, court disposition, execution of a court order or after commitment.

**Foster care** means 24-hour substitute care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

**Foster care maintenance payments** are payments made on behalf of a child eligible for title IV-E foster care to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel for a child's visitation with family, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences. ``Daily supervision" for which foster care maintenance payments may be made includes: (1) Foster family care--licensed child care, when work responsibilities preclude foster parents from being at home when the child for whom they have care and responsibility in foster care is not in school, licensed child care when the foster parent is required to participate, without the child, in activities associated with parenting a child in foster care that are beyond the scope of ordinary parental duties, such as attendance at administrative or judicial reviews, case conferences, or foster parent training. Payments to cover these costs may be:

included in the basic foster care maintenance payment; a separate payment to the foster parent, or a separate payment to the child care provider; and (2) Child care institutions-- routine day-to-day direction and arrangements to ensure the well-being and safety of the child.

**Foster family home** means, for the purpose of title IV-E eligibility, the home of an individual or family licensed or approved as meeting the standards established by the State licensing or approval authority (ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval authority (ies)), that provides 24- hour out-of-home care for children. The term may include group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State agency responsible for approval or licensing of such facilities. Foster family homes that are approved must be held to the same standards as foster family homes that are licensed. Anything less than full licensure or approval is insufficient for meeting title IV-E eligibility requirements. States may, however, claim title IV-E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure or approval and the date the actual license is issued, not to exceed 60 days.

**Legal guardianship** means a judicially-created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term legal guardian means the caretaker in such a relationship.

Sec. 1356.21 Foster care maintenance payments program implementation requirements.

**Trial home visits.** A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

**Child of a minor parent in foster care.** Foster care maintenance payments made on behalf of a child placed in a foster family home or child care institution, who is the parent of a son or daughter in the same home or institution, must include amounts which are necessary to cover costs incurred on behalf of the child's son or daughter. Said costs must be limited to funds expended on those items described in the definition of foster care maintenance payments.

## **Respite Care**

SEC. 431. [42 U.S.C. 629a] (a) IN GENERAL. —As used in this subpart:

(1) FAMILY PRESERVATION SERVICES. —The term “family preservation services” means services for children and families designed to help families (including adoptive and extended families) at risk or in crisis, including—

D) respite care of children to provide temporary relief for parents and other caregivers (including foster parents);

Respite is defined in federal regulation as an allowable Title IV-B child welfare services and is not an allowable expenditure under Title IV-E foster care maintenance. States may use Title XX to fund respite care services. Respite care is not a placement. Rather it is a temporary absence from the child’s family. Generally, families are offered respite care as a family preservation service to prevent the removal of the child (ren) from their home or to prevent the disruption of a foster care or pre adoptive placement. This service provides support to the caretakers so they are able to continue to care for the child in their home.

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