

# **Alaska Department of Health and Social Services Primary Review - Title IV-E Foster Care Eligibility**

## **Report of Findings for October 1, 2011 – March 31, 2012**

### **Introduction**

During the week of September 10, 2012, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of the State's title IV-E foster care program. The review was conducted in collaboration with the State of Alaska's Department of Health and Social Services, Office of Children's Services (DHSS/OCS), and was completed by a review team comprised of representatives from the State agency, Central Council Tlingit and Haida Tribes of Alaska, Tanana Chiefs Conference, CB Central and Region X Offices, ACF Region X Grants Management Office, and peer reviewers.

The purposes of the title IV-E foster care eligibility review were: (1) to determine whether the State of Alaska's title IV-E foster care program was in compliance with the eligibility requirements as outlined in 45 CFR §1356.71 and §472 of the Social Security Act (the Act); and (2) to validate the basis of the State's financial claims to ensure that appropriate payments were made on behalf of eligible children.

In July 2009, the Children's Bureau completed a secondary review. The State of Alaska was determined to be in substantial compliance with the title IV-E eligibility requirements for the period under review (PUR) of October 1, 2008 - March 31, 2009. Twelve (12) cases were found to be in error and ten (10) non-error cases were ineligible for Federal funding for a period in which payments were claimed.

### **Scope of the Review**

The primary review encompassed a sample of the State's foster care cases that received a title IV-E maintenance payment during the six-month PUR of October 1, 2011 – March 31, 2012. A computerized, statistical, stratified sample of one hundred (100) cases (80 cases plus 20 oversample cases) was drawn from a universe of title IV-E payments for the above period. The sample was selected from the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2011A submission data, which was transmitted by the State agency to the ACF for the PUR.

Eighty (80) cases were reviewed, which consisted of 74 cases from the original sample plus six (6) oversample cases. Six (6) cases were excluded from the original sample and one (1) from the oversample either because no title IV-E maintenance payment was made during the PUR or because the payment was returned to the Federal government prior to the State's receipt of the review sample. The State provided documentation to support excluding these cases from the review sample and replacing them with the cases from the oversample.

In accordance with Federal provisions at 45 CFR 1356.71, the State was reviewed against the requirements of title IV-E of the Act and Federal regulations regarding:

- Judicial determinations regarding reasonable efforts and contrary to the welfare as set forth in §472(a)(2)(A) of the Act and 45 CFR §§1356.21(b)(1) and (2), and (c), respectively;
- Voluntary placement agreements as set forth in §§472(a)(2)(A) and (d)-(g) of the Act and 45 CFR §1356.22;
- Responsibility for placement and care vested with the State agency as stipulated in §472(a)(2)(B) of the Act and 45 CFR §1356.71(d)(1)(iii);
- Eligibility for Aid to Families with Dependent Children (AFDC) under the State plan in effect July 16, 1996 as required by §472(a)(3) of the Act and 45 CFR §1356.71(d)(1)(v).
- Placement in a licensed foster family home or child care institution as defined in §§472 (b) and (c) of the Act and 45 CFR §1355.20(a); and
- Safety requirements for the child’s foster care placement as required at 45 CFR §1356.30.

The case file for each child in the selected sample was reviewed to verify title IV-E eligibility. The foster care provider’s file was also examined to ensure the foster family home or child care institution in which the child was placed during the PUR was licensed or approved and that safety considerations were appropriately addressed. In addition, payments made on behalf of each child were reviewed to verify if the expenditures were allowable under title IV-E and to identify underpayments that were eligible for claiming. A sample case was assigned an error rating when the child was not eligible on the date of activity in the PUR for which title IV-E maintenance was paid. A sample case was cited as non-error with ineligible payment when the child was not eligible on the activity date outside the PUR or the child was eligible in the PUR on the service date of an unallowable activity and title IV-E maintenance was paid for the activity date. In addition, underpayments were identified for a sample case when an allowable title IV-E maintenance payment was not claimed by the State for an eligible child during the 2 year filing period specified in 45 CFR §95.7, unless the title IV-E agency elected not to claim the payment or the filing period had expired.

At the end of the onsite review week, the State agreed sample numbers 2, 7, 18 and 47 were in error. The CB and the State agreed that the State would have a period of time following the onsite review to submit additional documentation for the four cases reviewed that were identified as “undetermined”. Based on the supplemental documentation provided, the finding for sample number 10 has been changed from “undetermined” to “non-error” and sample numbers 4, 15 and 63 have been determined “error” cases.

## **Compliance Finding**

The review team determined that 73 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Seven (7) cases were in error for either part or all of the PUR. One (1) additional case was identified that contained payments that were claimed improperly. Although this case is not considered an error case for determining substantial compliance, the ineligible maintenance payments and associated administrative costs are subject to disallowance.

The team also identified in the review sample two (2) underpayments for cases or costs that were eligible for payment under title IV-E. The associated underpayments were \$4,288.18 FFP maintenance (\$8,576.35 not claimed).

Based on the review findings of 7 error cases, the Children’s Bureau has determined that the State of Alaska’s title IV-E foster care program is not in substantial compliance with Federal eligibility requirements for the PUR. Substantial compliance in a primary review is achieved when the number of cases in error does not exceed four (4).

Pursuant to 45 CFR 1356.71(i), you are required to develop a Program Improvement Plan (PIP) designed to correct those areas determined not in substantial compliance. The PIP will be developed by the State, in consultation with CB Region X staff, and must be submitted to the CB Region X Office no later than 90 days from the date of this letter. Once the State agency has completed the PIP, a secondary review of a sample of 150 title IV-E foster care cases will be developed.

### **Case Record Summary**

The following charts record the error cases, non-error cases with ineligible payments, underpayments, reasons for the improper payments, improper payment amounts, and Federal provisions for which the State did not meet the compliance mandates.

#### **Error Cases**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments</b>
# 2	Title IV-E was claimed for “travel-educational continuity” while child was on a trial home visit. [45 CFR 1355.20 and 475(4)(A) & (B) of the Act] <i>Ineligible: 2/16/2012 to 5/11/2012</i>	\$618.50 Maintenance (\$309.25 FFP)  \$0 Admin FFP
# 4	For the period the child was on a trial home visit, foster care maintenance payments were claimed made for a “held bed” in an unlicensed foster home. Consistent with CWPM 8.3A.3 1 and 8.3 A.3 4, a child is ineligible for title IV-E while placed with a biological parent. The State also claimed title IV-E for unallowable transportation. [45 CFR 1356.71(d)(1)(iv), 472(c)(1), and 475 (4)(A) & (B) of the Act, and 45 CFR 1355.20]. <i>Ineligible: 12/19/2011 to 01/08/2012</i>	\$1,168.77 Maintenance (\$584.39 FFP)  \$577.00 Admin FFP

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments</b>
# 7	Foster care maintenance payments were made for a child placed in a foster home that was not fully licensed by the State. [472 (c)(1) of the Act and 45 CFR 1356.71(d)(1)(iv), and 1355.20]. <i>Ineligible: 09/23/11 to 01/26/2012</i>	\$2,459.00 Maintenance (\$1,229.50 FFP)  \$4,574.00 Admin FFP
# 15	Foster care maintenance payments were made for a child when there was a judicial finding of “no reasonable efforts to prevent removal”. Initial judicial finding of “reasonable efforts not required due to circumstances” was superseded by the court’s subsequent judicial finding of “no reasonable efforts”. [45 CFR 1356.21(b)(1)(iii) and 472(a)(2)(A)(ii) and 471(a)(15)(B)(i) of the Act] <i>Ineligible: Entire out of home placement episode (03/03/12 to present)</i>	\$4,584.50 Maintenance (\$2,274.25 FFP)  \$8,629.00 Admin FFP
# 18	Foster care maintenance payment made for the month prior to judicial finding of reasonable efforts to prevent removal. [45 CFR 1356.21(b) and 472(a)(2)(A)(ii) and 471(a)(15)(B)(i) of the Act] <i>Ineligible: 11/12/11 to 11/30/11</i>	\$384.45 Maintenance (\$193.23 FFP)  \$1,438 Admin FFP
# 47	Foster care maintenance payment made for a child who was not removed from a specified relative. Child was removed from an unrelated guardian. [45 CFR 1356.21(k)(1)(ii) and 45 CFR 233.90(c)(1)(v)] <i>Ineligible: Entire out of home placement episode (01/26/11 to present)</i>	\$13,357.10 Maintenance (\$6,811.65 FFP)  \$24,086.00 Admin FFP
# 63	Foster care maintenance payment made for a child who did not live with specified relative within six months of removal. [472(a)(1) of the Act, 45 CFR 1356.21(l)(2), and 45 CFR 233.90(c)(v)(B), and CWPM 8.3 A.11 1] <i>Ineligible: Entire out of home placement episode (02/24/11 to present)</i>	\$15,571.46 Maintenance (\$7,902.87 FFP)  \$22,681 Admin FFP

**Total Maintenance FFP: \$ 19,304.13**

**Total Administrative FFP: \$ 61,985**

**Non-error Cases with Ineligible Payments**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments</b>
# OS 1	Title IV-E maintenance was claimed prior to a timely judicial determination of reasonable efforts to finalize permanency plan. [471(a)(15) of the Act and 45 CFR 1356.21(b)(2)] <i>Ineligible: 4/1/12 to present</i>	\$3,375.74 Maintenance (\$1,687.87 FFP) \$5,735 Admin FFP

**Total Maintenance FFP: \$1,687.87**

**Total Administrative FFP: \$5,735**

**Underpayment Cases**

<b>Sample Number</b>	<b>Underpayment Reason &amp; Ineligibility Period</b>	<b>Underpayments</b>
# 70	Provider was fully licensed, but child incorrectly determined ineligible due to late judicial determination of reasonable efforts to finalize permanency plan. “Reasonable efforts to finalize” determinations are due 12 months from the date child enters foster care. Worker used a finding of probable cause of child in need of aid for “Date child entered foster care”, instead of the earlier of a finding of child abuse and neglect or 60 days. Foster care maintenance could be claimed for 8/1/11 through 9/30/11.	\$2,367.16 Maintenance (\$1,183.58 FFP)
# 78	Eligible child in fully licensed foster home that meets the provider requirements; foster care maintenance could be claimed for 10/01/2011 to 11/30/2011 and 01/01/2012 to 3/31/2012	\$6,209.19 Maintenance (\$3,104.60 FFP)

**Total Maintenance FFP: \$ 4,288.18**

**Areas in Need of Improvement**

The findings of this review indicate Alaska needs to further develop and implement procedures to improve program performance in the areas discussed below. For each of these, we have provided a discussion of the nature of area needing improvement, the specific title IV-E requirement to which it relates and suggestions for corrective action Alaska should undertake. In the title IV-E cases reviewed, the following concerns were noted:

## Quality Assurance Process

For most of the error cases, the eligibility determination process incorrectly identified a child as eligible and title IV-E was claimed. Error cases were not in compliance with a broad range of title IV-E requirements, which indicates there may be some issues with the accuracy of the eligibility determinations, thereby suggesting a quality assurance (QA) review process be put in place to help Alaska identify what areas may need improvement to ensure accuracy of claiming. In addition, the QA system can assist supervisors and management in further identifying gaps in training and procedures. Errors identified during the review included improper claiming of title IV-E payments: when a child did not meet initial AFDC eligibility requirements (2 cases), while a child was in an unlicensed placement (2 cases), when there was a judicial determination of no reasonable efforts to prevent removal (1 case), prior to a finding of reasonable efforts to prevent removal (1 case), and for unallowable costs (1 case). In the one non-error case with improper payments, title IV-E was improperly claimed prior to a timely judicial determination of reasonable efforts to finalize the permanency plan.

We suggest Alaska employ a Quality Assurance system that would provide a secondary oversight to ensure that there are adequate “checks and balances” in place to identify any procedural inconsistencies that may arise and to improve the claiming processes and procedures. The State may benefit from internal reviews to insure that the title IV-E determinations are accurate and consistent on a statewide basis for monitoring both initial and ongoing eligibility determinations. Regular periodic monitoring of eligibility decisions will help to eliminate and prevent improper claiming of title IV-E funds.

The State should continue to provide staff training and to conduct periodic monitoring of eligibility decisions to eliminate and prevent improper claiming of title IV-E funds.

We suggest the implementation of a quality control process become a key component of the State’s Program Improvement Plan. We recommend that Alaska review the current processes for communicating information between the State’s Central Office and the field offices. In particular, Alaska should look at the processes related to dissemination of policy and procedure to the field offices and address whether there is a system in place for field offices to ask questions and provide feedback.

We encourage Alaska to include their eligibility technicians on their review team for the title IV-E reviews in Alaska. Participating in the review process offers an opportunity for professional growth and increased understanding of the Federal requirements. It also provides an opportunity for title IV-E specialists to have input and identify system improvements to increase the accuracy of title IV-E eligibility determinations.

## Court Activity

Reviewers reported there were several cases with a finding of “reasonable efforts to prevent removal were not possible” when it was clear from the case record that the family was known to the agency. In one error case, the judge initially made this determination and later made a finding that no reasonable efforts were made to prevent removal. We suggest Alaska review the

court's use of this finding and work with the Court Improvement Program (CIP) to determine whether the finding is being used according to the case specifics and whether clarification or additional training needs to be provided.

There were three cases where findings were not clearly stated on the court order, or boxes regarding the findings were not checked, so reviewers had to listen to oral transcripts to determine whether the court had made the findings needed. We understand it is a common practice for eligibility technicians to review oral transcripts. We encourage the State and the CIP to work with the courts to ensure accurate recording of all findings on court orders.

We found one underpayment case in which the State incorrectly determined that the judicial determination of reasonable efforts to finalize the permanency plan was late and did not claim title IV-E funds. For title IV-E purposes, the definition of the "date the child entered foster care" is the earlier of a judicial finding of child abuse or neglect or 60 days from the date the child is physically or constructively removed from the home (45 CFR 1355.20(a)). The first judicial determination of reasonable efforts to finalize the permanency plan is due 12 months from this date. During this review, we learned the State was using the date of a finding of probable cause of child in need of aid, which is usually made in the removal order. However, the State Attorney General's office clarified that they do not consider this to be a finding of child abuse and neglect and that a finding of child abuse and neglect usually occurs at the adjudicatory hearing. If a finding of child abuse and neglect is made later than 60 days from removal, the State should use 60 days from removal as the date child entered care. We suggest the State conduct a review to identify other similar underpayments.

### AFDC Eligibility

AFDC-relatedness was not correctly determined for two (2) cases. In one (1) error case, the child was judicially removed from an unrelated guardian. This did not meet the title IV-E eligibility requirement that the child is removed from a specified relative at 45 CFR 1356.21(k)(1)(ii) and 45 CFR 233.90(c)(1)(v).

In the other error case, the child was not living with the specified relative from whom the child was judicially removed within six months of removal. Under 45 CFR 233.90(c)(v)(B), a "home" is the customary family setting of the relative who has primary responsibility for the daily care of the child. The case material documents the child's primary residence as that of the stepfather with whom the child has lived since 2009 and indicated occasional undocumented visits with the mother. The occasional visits do not meet the regulatory definition of "home" cited above. The State did not document the child was living with the mother within six months of removal.

In spite of the improperly paid cases, the eligibility files were well-organized and eligibility decisions were clearly documented by the eligibility technicians. The files also contained clear documentation of income, resources, and deprivation.

## Licensure & Safety

Two of the cases were determined to be in error because the homes where the children were placed were not fully licensed. One of these cases was found to be in error because title IV-E funds were claimed prior to issuance of the license. In the other error case, title IV-E funds were claimed for an unlicensed home while the child was on a trial home visit. Title IV-E foster care maintenance payments should be claimed only for eligible children placed in approved or licensed homes or facilities.

The title IV-E eligibility review conducted in 2009 also identified some problems with Alaska's compliance with Federal licensing and safety requirements and a need to represent child eligibility for home licensure. In these cases, Alaska determined the children were eligible for title IV-E even though they were placed with providers that were not fully licensed.

In Alaska, "provisional licenses" are issued to both "fully licensed homes" and "homes with conditions" and/or variances. Alaska's licensing system allows a provisional license to be issued with several conditions noted on the license which would make the home not fully licensed. There are also circumstances where a home would be considered fully licensed but with conditions or variances. The fact that there was a license issued did not necessarily mean that the home was "fully licensed" meeting all State and Federal licensing requirements. We suggest Alaska develop distinct types of licenses to eliminate any confusion over whether a home is fully licensed. Eligibility staff should be instructed on the types of license that qualify as being fully licensed and be reminded that costs incurred for a child in a placement that's not fully licensed are not allowable under title IV-E.

In addition, Alaska requires any conditions or variances to be noted on the license, thus indicating that the home was not considered to be fully licensed. Reviewers found two instances where there were conditions (pending completion of fingerprints) that were not noted on the actual license. This made it appear the home was fully licensed when it was not.

As a result of the 2009 title IV-E review findings, recommendations were made to improve the form Alaska uses to monitor residential care provider's compliance with licensing requirements. Since that review, Alaska has updated the process for monitoring residential care providers and made changes to the form reviewing the completion of staff criminal background checks. However, the review process revealed the old checklist is still in use. In two cases, the State did not use the updated version of the form (checklist) for reviewing residential facilities during the PUR. The State was able to satisfactorily document for the eligibility review that the safety checks for residential facilities were completed consistent with Alaska's policy.

We suggest Alaska develop a quality assurance process for licensing foster homes and residential care providers to assure that licenses are issued timely and accurately and that State policies and procedures are followed. A component for licensure also should be part of Alaska's quality assurance system that is recommended for the State to put in place to monitor agency decisions with regard to eligibility determinations and claims processing.

## **Program Strengths & Promising Practices**

The following positive practices and processes of the title IV-E foster care eligibility program were observed during the review. These approaches seem to have led to improved program performance and successful program operations.

In the title IV-E cases reviewed, the following strengths were noted:

### Judicial Determinations

The State's partnership with the Court Improvement Project has resulted in improved timeliness of court orders and consistent use of court order templates.

Reviewers reported court orders were timely, child-specific and detailed, and findings were usually explicit. "Contrary to the welfare to remain in the home" was addressed as a finding in the first removal order and these findings were case-specific. "Reasonable efforts to prevent removal" findings were usually addressed in the first removal order. The use of court order templates was evident in the review, and was clearly helpful in encouraging more case-specific detail. These forms also include separate sections to address provisions of the Indian Child Welfare Act (ICWA) for ICWA and non-ICWA cases, which the reviewers found effective for child-specific rulings.

Petitions were of high quality and provided good information about the circumstances of the removal. The petitions indicated that the caseworkers were familiar with the family circumstances and had been working with the families prior to removal recommendations. The State's practice of including the petition in the eligibility record provides a more comprehensive account of the removal episode, providing critical information for the title IV-E eligibility technicians to determine compliance with the requirements related to AFDC and judicial determinations.

"Reasonable efforts to finalize the permanency plan" determinations were made within the required timeframe in all of the cases reviewed. The practice of scheduling the hearings to occur within 11 months at the initial hearing has proved effective in ensuring the timeliness of judicial determinations of reasonable efforts to finalize the permanency plan.

### Licensure & Safety

Alaska's licensing files were well-organized. The time frames for the State's criminal background check process has greatly improved since the last review. The reviewers found that the background checks were performed in a timely manner and that the results of the findings were communicated effectively and documented.

## **Disallowance**

Based on the results of this review, the State of Alaska has been determined not in substantial compliance. Seven (7) cases were determined not eligible for funding under title IV-E foster care maintenance payments for periods in the PUR.

ACF has determined that \$8,027 in title IV-E Federal Financial Participation (FFP) funds were inappropriately claimed as foster care maintenance payments for the PUR and are thereby disallowed. The proportionate share of associated administrative dollars of FFP also is disallowed. The total disallowance for the seven error cases is \$19,304 in FFP for maintenance, and \$61,985 for associated administrative costs. For non-error cases with ineligible payments, \$1,688 in FFP Maintenance funds were inappropriately claimed, as well as \$5,735 in associated FFP administrative costs.

Based on the results of the above determinations for Alaska's primary title IV-E eligibility review, the total disallowance is \$88,712 in FFP. The State must identify and repay any ineligible payments that occurred for the error and non-error cases subsequent to the PUR. Also, no future claims should be submitted on these cases until it is determined that all eligibility requirements are met.

## **Next Steps**

Alaska is required to develop a Program Improvement Plan (PIP) designed to correct those areas needing corrective action as identified in the enclosed report. The PIP is not to exceed 1 year. It will be developed by the State, in consultation with CB Region X staff, and must be submitted to the CB Region X Office within 90 days of the receipt of this letter and report.