

Final Report
State of California
Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for
October 1, 2014 – March 31, 2015

Introduction

During the week of July 27, 2015 the Children’s Bureau of the Administration for Children and Families conducted a primary review of the state’s title IV-E foster care program. The title IV-E foster care review (IV-E review) was conducted in collaboration with California and was completed by a review team comprised of representatives from California Department of Social Services (CDSS), County Child Welfare Agencies, Probation Departments, Administrative Office of the Courts, the Karuk Tribe, Children’s Bureau Central and Regional Offices, and peer reviewers.

The purposes of the IV-E review were (1) to determine whether the California title IV-E foster care program is 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 appropriate payments were made on behalf of eligible children.

Scope of the Review

The IV-E review encompassed a sample of the state’s foster care cases in which a title IV-E maintenance payment was made for an activity that occurred in the six-month period under review (PUR) of October 1, 2014 until March 31, 2015. A computerized statistical sample of 106 cases (80 cases plus 26 oversample cases), was drawn from data the state submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period.

Eighty (80) cases were reviewed, which consisted of 69 cases from the original sample plus 11 oversample cases. The eleven cases were excluded from the original sample because no title IV-E foster care maintenance payment was made for a period of activity during the PUR. In some of the cases, the child was no longer in the placement and care of the title IV-E agency, but the foster care case was not closed in the AFCARS submission. The state provided documentation to support excluding these cases from the review sample and replacing them with cases from the oversample. The sample was stratified to ensure that foster care cases that are supervised by the State Probation Departments were included. Of the 80 cases reviewed, 77 were from the county child welfare agencies and 3 were from the probation department. These cases were drawn from 49 of the state’s 58 counties. Cases from Alameda, Los Angeles, Butte, Lake, Sacramento, San Diego, San Francisco, Santa Clara, and Sonoma counties were excluded from the sample because they are all included in the state’s extended title IV-E Waiver Demonstration Project.

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) and (c), respectively;
- Voluntary placement agreements as set forth in §§472(a)(2)(A)(i) and (d)-(g) of the Act and 45 CFR §1356.22;
- Responsibility for placement and care vested with 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 1356.71(d)(1)(iv); and
- Safety requirements for the child’s foster care placement as required at §471(a)(20)(A) of the Act and 45 CFR §1356.30.

The case record of each child in the selected sample was reviewed to verify title IV-E eligibility. The foster care provider’s record was examined to ensure the foster family home or child care institution where the child resided during the PUR was fully licensed and met the safety requirements. Payments made on behalf of each child also were reviewed to verify expenditures were properly claimed under title IV-E and to identify underpayments 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 date of an unallowable activity and title IV-E maintenance was paid for the unallowable activity in either situation. In addition, underpayments were identified for a sample case when the state unintentionally did not claim an allowable title IV-E maintenance payment for an eligible child within the 2-year filing period specified in 45 CFR §95.7 and the filing period had not expired.

The Children’s Bureau and California agreed the state would have a period of time following the onsite review to submit additional documentation for a case during the onsite review identified as in error, in “undetermined” status, or not in error but with ineligible payments. Subsequent to the review, one case was changed from an error to a non-error case as a result of the state providing additional documentation to demonstrate that the child was title IV-E eligible and that title IV-E claims made on behalf of the child were proper. In addition, an additional five cases that were pending at the end of the review week were also cleared as non-error cases because the state was able to provide additional documentation to confirm that certain child care institution staff met the state’s criminal records clearance requirement timely and one case was cleared after further consultation with the Children’s Bureau Central Office.

Compliance Finding

The review team determined 76 of the 80 cases met all eligibility requirements (i.e., were deemed non-error cases) for the PUR. Four cases were determined as in error for not meeting the eligibility requirements either for periods only during the PUR or for the entire foster care episode. Two non-error cases met eligibility requirements for the PUR, but were found to have periods in the foster care episode for which title IV-E maintenance payments were improperly claimed.

The Children’s Bureau has determined that the California title IV-E foster care program is in substantial compliance for the PUR. Substantial compliance in a primary IV-E review means the total number of error cases is four or fewer cases determined as not meeting eligibility requirements for the PUR. The supplemental findings for non-error cases with ineligible payments were not considered in determining the state’s level of compliance with federal requirements. Since the state is in substantial compliance, a secondary review of 150 sample cases is not required. The next primary review will be held in three years.

Case Summary

The following charts record the improper payment cases comprised of: error cases and non-error cases with ineligible payments; reasons for the improper payments; improper payment amounts; and federal provisions for which the state did not meet the compliance mandates. Calculation of improper payments is based on the federal financial participation (FFP) rates of maintenance payments at the state’s Federal Medical Assistance Percentages (FMAP) for applicable year(s) for each sample case.

Error Cases:

Sample Number	Improper Payment Reason & Ineligibility Period October 1, 2014 – March 31, 2015	Improper Payments (FFP)
#37	Judicial determination of reasonable efforts to finalize permanency plan not met for PUR. The judicial finding was due by February 2, 2015 and was made June 1, 2015. [§472(a)(2)(A)(ii) of the Act; 45 CFR §1356.21(b)(2)] Ineligible: : 2/01/2015—5/31/2015	\$1,452 Maint \$2,358 Admin

Sample Number	Improper Payment Reason & Ineligibility Period October 1, 2014 – March 31, 2015	Improper Payments (FFP)
#43	<p>Removal from and living with requirements not met by the same specified relative [§§472(a)(1)& (2) of the Act; 472 a(3)(A)(ii)(II); 45 CFR §1356.21(1)] e § 472(a)(3)(A)(II) of the Act and 45 CFR § 1356.21(1)(2)</p> <p>The child was living with his related legal guardian at the time of removal in October 2012. However, the court dismissed the legal guardianship and referenced the previous foster care episode when the child had been removed from the parents. That foster care stay ended with the establishment of the guardianship. As a result of this action, the child was judicially removed from the parents in the current foster care episode. The child had not lived with his parents since before the ending of the first foster care episode (in 2001). There also was not a contrary to the welfare findings in the court order that sanctioned the removal in the current episode. [45 CFR § 1356.21(c)]</p> <p>Ineligible: Entire FC episode; 10/15/2012—until end of the foster care episode</p> <p>The eligibility determination was not based on the circumstances in the home of the specified relative from whom the child was removed for the current foster care episode. Rather than making a new eligibility determination, the agency looked to the title IV-E eligibility determination in the child’s previous foster care episode prior to the establishment of the guardianship. [472(a)(1) and (3) of the Act; Regulatory Citation: 45 CFR §§ 233.20, 233.90 and 1356.21(k) & (l)]</p> <p>Ineligible: Entire FC episode; 10/15/2012— until end of the foster care episode</p>	<p>\$11,440 Maint</p> <p>\$17,328 Admin</p>
#55	<p>The child was placed in the home of a relative caregiver once he was removed from his own home in January 2015. The caregiver did not meet all of the licensing standards until February 4, 2015. However, a supplemental title IV-E maintenance payment was issued to the caregiver on behalf of the child for the ineligible period of January 2015. [Statutory Citation: § 472(b) & (c) of the Act; Regulatory Citation: 45 CFR §§ 1355.20 and 1356.71(d)(1)(iv)]</p> <p>Ineligible: 1/1-31/2015</p>	<p>\$54 Maint</p> <p>\$589 Admin</p>
#62	<p>The child’s foster care episode ended with the establishment of a legal guardianship and termination of dependency in November 2014. However, a foster care maintenance payment was made on behalf of the child for the subsequent month. [Statutory Citation: §§ 472(b) & (c) of the Act;]</p> <p>Ineligible: 11/6/2014-12/31/2014</p>	<p>\$377 Maint</p> <p>\$1179 Admin</p>

Maint \$13323

Admin 21454

Total: \$34,777

Non-error Cases with Ineligible Payments:

Sample Number	Improper Payment Reason & Ineligibility Period October 1, 2014 – March 31, 2015	Improper Payments (FFP)
#65	Foster care maintenance payment claimed for a period prior to the home being fully licensed or approved. [Statutory Citation: § 472(b) & (c) of the Act; Regulatory Citation: 45 CFR §§ 1355.20 and 1356.71(d)(1)(iv)] Ineligible: 4/24-30/2014	\$36 Maint \$577 Admin
#42	The title IV-E eligible child moved from one allowable placement setting to another in the middle of the month. The initial placement setting received a full month's reimbursement. A prorated title IV-E supplemental issuance was also made to each of the placement care providers. The state is not able to provide documentation that reconciles the full month's title IV-E maintenance payment claim. Ineligible: 11/1-30/2014	\$4,357 Maint \$589 Admin

Maint \$4393

Admin 1166

Total: \$5,559

Areas Needing Improvement

Findings of this review indicate the state needs to further develop and implement procedures to improve program performance in the following areas. For each issue, there is a discussion of the nature of the area needing improvement, the specific title IV-E requirement to which it relates and the corrective action the state should undertake.

Issue #1: Timeliness of Judicial Determinations Regarding Reasonable Efforts to Finalize a Permanency Plan. One (1) case was in error because the judicial requirement of “reasonable efforts to finalize a permanency plan” was not met timely. California like many states, incorporated the federal requirement for a judicial determination of “reasonable efforts to finalize a permanency plan” into its court proceeding for the 12-month permanency hearing. However, if the permanency hearing is delayed or continued, the delay results in the state obtaining a judicial determination beyond the 12 months required by federal regulation.

Title IV-E Requirement: For a child who is judicially removed and remains in foster care for 12 months or more, federal provisions at §472(a)(2)(A) of the Act and 45 CFR §1356.21(b)(2) require the state to obtain a judicial determination of whether the state made “reasonable efforts to finalize a permanency plan” for the child. The judicial finding must occur at regular 12-month intervals for the duration of the foster care episode and no later than 12 months from the month in which the prior determination is obtained. If the judicial determination of “reasonable efforts to finalize” is not made or is not timely, the child becomes ineligible from the beginning of the first month after it is due and remains ineligible until the judicial determination is made.

Recommended Corrective Action: The requisite judicial determination need not be tied to a permanency or other court hearing. The judicial determination may be rendered by the court at any point during the 12-month period. The state should continue to develop and implement procedures to ensure timely judicial determinations of “reasonable efforts to finalize the permanency plan” regardless of the timing of the permanency hearing. The accuracy and reliability of eligibility determinations generally are increased through training of the judiciary and other court officials to correct delays in judicial findings as well as to secure court orders that reflect title IV-E criteria on legal authority, best interests and reasonable efforts. Staff training will help to ensure workers make eligibility decisions based on the correct elements needed for compliance and to eliminate the authorization of payments prior to establishing compliance with requirements.

Issue #2: *Judicial determinations that it was contrary to the welfare for the child to remain in the home were not made for children re-entering foster care and the initial title IV-E eligibility determination was not made for the new foster care episode.* In one case, the child was living with and removed from a relative legal guardian. The courts terminated the guardianship and reinstated the dependency that ended with the guardianship in 2001. The court order that sanctioned the new removal did not have the requisite findings of contrary to the welfare of the child to remain in the home. In addition, the agency did not complete a new eligibility determination based on the new foster care episode, but rather used the determination that was in place in the previous foster care episode.

Title IV-E Requirement: The judicial determination regarding contrary to the welfare must be made in the first court ruling that sanctions, even temporarily, the child’s removal from the home. The first court ruling refers to the judicial order that stems from the first court proceeding on the child’s removal. If the judicial determination is not made in the first court ruling pertaining to that removal from home, this eligibility requirement is not met.

Recommended Corrective Action: The CDSS should work with the Court Improvement Program to provide training to courts about subsequent judicial removals from the home of a parent or a legal guardian. Once a title IV-E eligible child exits foster care and the state no longer has placement and care responsibility, the foster care episode has ended. If the child returns to foster care, a new eligibility determination, including new judicial findings that it is contrary to the welfare of the child to remain in the home, must be met in order for the child to be eligible for title IV-E in the new foster care episode. In addition, training should be provided to the eligibility workers to ensure that eligibility determinations are made only in accordance to the eligibility requirements.

Issue #3: *Allowable Costs paid for a period before or after the period of eligibility.* In two (2) non-error cases it was determined title IV-E maintenance costs were made prior to the period that all eligibility criteria were met or after the child was no longer considered to be in foster care because dependency was dismissed. In one case, a clothing allowance was paid on behalf of a child prior to the relative caregiver becoming fully approved for licensure. The child was placed in the month of January and the relative caregiver was approved in the month of February. The clothing allowance was issued for the month of January—prior to the month of full eligibility.

Title IV-E eligibility requires that a placement be fully licensed or approved prior to making a maintenance payment.

In another case, a maintenance payment was made on behalf of a child beyond the period of eligibility when the foster care episode ended with the establishment of legal guardianship and termination of dependency. Title IV-E eligibility requires the title IV-E agency to have placement and care responsibility.

Title IV-E Requirement: Consistent with federal law and regulations, claiming title IV-E is limited to a child's eligibility in that all eligibility criteria consistent with section 472(a) & (b) must be met.

Recommended Corrective Action: The State presently relies on three separate payment systems. None of the systems provides a function that automatically (via programming) prevents payments under title IV-E until all title IV-E eligibility criteria are met. As a result, human errors are not controlled. The state should continue to use its internal title IV-E review process to assess and identify overpayments made in this way and work with the local agencies to reconcile these errors when identified in the system. It also should consider adding an edit check to its payment systems that will prevent a payment from being made until all title IV-E requirements have been met.

Issue #4: *Use of the supplemental issuance code as a "catch-all" for certain costs.* Regional Office staff were required to manually review and request additional information in 26 cases in order to determine the purposes for the supplemental issuances and whether they were for allowable title IV-E maintenance expenditures. The state uses the supplemental issuances (SI) code for a number of different actions: reconciling increased maintenance payments, emergency foster care payments, clothing allowance, travel costs to a child's school of origin, as well as specialized care increases. When this code is used it is difficult to determine the specific purpose. Once the information is rolled up to the state office for claiming purposes, the state office is not able to determine what components are captured in the supplemental code.

Title IV-E Requirement: Consistent with federal law and regulations claiming title IV-E is limited to a child's eligibility in that all eligibility criteria consistent with section 472 (a) & (b) must be met. Claiming of title IV-E foster care maintenance payments also is limited to the cost of providing certain expenditures covered within the federal definition of foster care maintenance at §475(4) of the Act and within federal regulations at 45 CFR 1356.60(a)(1)(i). The state must document foster care maintenance payments claimed for title IV-E reimbursement are for allowable expenditures in accordance with federal mandates.

Recommended Action: The state should provide guidance to counties to be sure that it is able to segregate out the reasons why the supplemental issuance code is used so that the various types of supplemental payments may be identified. Alternatively, it should consider modifying the code structure to more easily identify costs by associating each with a separate "sub-code" (e.g., SI -1, SI-2, etc.)

Program Strengths and Promising Practices

The following positive practices and processes of the state's title IV-E program were observed during the review. This year, reviewers noted that there were several cases in which the first order that sanctioned the removal preceded the detention hearing and was in the form of a "Pick-up" or "Protective Custody" Warrant". In each case, reviewers noted that the requisite judicial finding of contrary for the child to remain in the home was made.

Although there was one case identified as an error due to the delay in get the courts finding that reasonable efforts were made to finalize the permanency plan, the State's typical process in which courts routinely assess for the effort to finalize the permanency plan at every month is a strength.

Reviewers also noted that eligibility workers made better use of the comment section of the state's FC-3 Eligibility form to clarify, as needed, its determination on which parent deprivation was established. We understand that when warranted, the State's title IV-E E Reviewers, provide this feedback to the counties to strengthen its documentation in determining eligibility.

Disallowances

A disallowance in the amount of \$13,323 in maintenance payments and \$21,454 in related administrative costs of FFP is assessed for title IV-E foster care payments claimed for error cases. Additional amounts of \$4,393 in maintenance payments and \$1,166 in related administrative costs of FFP are disallowed for title IV-E foster care payments claimed improperly for non-error cases. The total disallowance as a result of this IV-E review is \$40,336 in FFP.

California also must identify and repay any ineligible payments for the error and non-error cases that occurred for periods subsequent to the PUR. No future claims should be submitted on these cases until it is determined all eligibility requirements are met.

Next Steps

As part of the state's ongoing efforts to improve its title IV-E foster care eligibility determination process, the Children's Bureau recommends California strengthen its internal title IV-E Eligibility Review system by instituting a quality assurance process, partnering with the state's fiscal unit, and issuing at least an annual report on the findings from the reviews to ensure that the learning cycle continues. Appropriate corrective action must be taken in instances of noncompliance with federal laws, regulations and policies. The Children's Bureau Region 9 Office staff is available to assist the state in identifying corrective actions and obtaining support available through our national network of training and technical assistance centers to help the state address issues and concerns raised during this IV-E review.