

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

Introduction

During the week of August 24, 2015 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 Delaware Department of Services to Children, Youth and Their Families (DSCYF). The purposes of the IV-E review were (1) to determine whether the Delaware 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.

In addition to CB Central and Regional Offices and ACF Regional Grants Management, the review team was comprised of representatives from DSCYF's Division of Family Services (DFS) and the Delaware state court improvement program (CIP). Representatives from the state title IV-E eligibility workers and supervisors participated as reviewers during this primary review; the CIP coordinator provided onsite consultation during the case review as well. Their participation helped further the state's knowledge of title IV-E requirements and documentation expectations and developed increased understanding of the importance of accurate eligibility determinations and their role in that process.

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 through March 30, 2015. A computerized statistical sample of 100 cases (80 cases plus 20 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 from the original sample. Cases from the oversample were not reviewed as there were no cases excluded from the original sample.

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 also 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 CB and the state initially agreed that subsequent to the onsite review, DFS would have two weeks to submit additional documentation for a case that during the onsite review was identified as in error, in undetermined status or having an ineligible payment. In particular, during the onsite review, CB initially found in error a number of cases for which documentation of a judicial finding to the effect it was contrary to the welfare of a child to remain in the removal home was not readily available. The cases were ones in which the judicial findings were made in verbal orders. Because the state was not able to obtain within the two-week timeframe all of the documentation to demonstrate that the appropriate judicial determinations were made, Delaware requested and was granted additional time to obtain and transmit documentation to resolve these errors. Supplemental documentation subsequently submitted by the state supported changing the compliance finding of 14 cases from error to non-error.

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. One non-error case met eligibility requirements for the PUR, but was found to have other periods in the foster care episode for which title IV-E maintenance payments were improperly claimed. Accordingly, federal funds claimed for title IV-E foster care maintenance payments, including related administrative costs, associated with the error and non-error cases with ineligible payments are being disallowed. Because the number of cases in error is fewer than five (5), Delaware is in substantial compliance for the PUR.

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	Improper Maintenance Payments (FFP)	Improper Administrative Payments (FFP)
DE-17	Foster care maintenance payment made during PUR for the month prior to judicial finding of reasonable efforts to prevent removal. [§471(a)(15) of the Act; 45 CFR §1356.21(b)] Ineligible: 11/26/2014 – 11/30/2014	\$40	\$0
DE-19	Foster care maintenance payment made during PUR for child placed in a detention facility, which is outside the definition of foster care setting [CFR 1355.20(a)] Ineligible: 01/25/15 – 04/28/15	\$1,546	\$4,225
DE-57	AFDC eligibility not established for child because specified relative's income exceeded AFDC income standards. [§472(a)(3)(B) of the Act; 45 CFR §1356.21(k) & (l)] Ineligible: Entire FC episode; reported disallowance period: 02/01/2015 – 05/31/2015	\$1,675	\$3,638
DE-78	Judicial determination that continuation in the home was contrary to the welfare of the child not made in first court ruling sanctioning removal of child. [§472(a)(2)(A) of the Act; 45 CFR §1356.21(c)] Ineligible: Entire FC episode; reported disallowance period: 06/08/2011 – 05/06/2015	\$11,187	\$31,232
	Subtotal	\$14,448	\$39,095
		Total:	\$53,543

Non-error Cases with Ineligible Payments:

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Maintenance Payments (FFP)	Improper Administrative Payments (FFP)
DE-43	Foster care maintenance claimed outside PUR prior to judicial finding of reasonable efforts to prevent removal [§471(a)(15) of the Act; 45 CFR §1356.21(b)] Ineligible: 07/28/2014 – 07/31/2014	\$29	\$0
	Subtotal	\$29	\$0

Total: \$29

Areas Needing Improvement

The 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: *Judicial determination it is contrary to a child's welfare to remain in the home.* In one (1) case a judicial determination was not made in the first court ruling sanctioning removal that it was contrary to the welfare of a child to remain in the home.

Title IV-E Requirement: The judicial determination regarding *contrary to welfare* must be made in the first court ruling that sanctions, even temporarily, the child's removal from home, [45 CFR 1356.21(c)]. If the judicial determination is not made in the first court ruling pertaining to that removal from home, this eligibility requirement is not met and the child is ineligible under title IV-E for the entire foster care episode.

Recommended Corrective Action: The DFS should collaborate further with the Delaware CIP coordinator and Family Court to develop procedures to ensure that a determination that it is contrary to the welfare of a child to remain in the home is made and fully documented in the first court ruling sanctioning a child's removal and the court order or transcript is routinely provided to DFS. Particular attention should be given to processes to document the judicial finding when the first ruling is a verbal order. During the onsite phase of this review there were numerous additional cases that were initially found to be in error or as having an ineligible payment due to lack of documentation in case records that a judicial *contrary to welfare* finding was made in verbal orders sanctioning the removal of a child. This required extensive efforts on the part of DFS and the CIP coordinator to identify and provide the necessary documentation. Fourteen (14) of the original fifteen (15) cases found in error due to the absence of documentation of a judicial finding of contrary to welfare were reversed after the appropriate documentation was provided in the period following the onsite review. The state also should ensure that eligibility

workers confirm documentation of that finding in a verbal removal order prior to determining whether this requirement is met.

Issue #2: Judicial finding of reasonable efforts to prevent removal

One (1) case was in error because foster care maintenance payments were claimed during the PUR for the month prior to a judicial finding of reasonable efforts to prevent removal. The child was removed from the home and placed in foster care on November 26, 2014; the judicial determination that the agency made reasonable efforts to prevent removal was made in December 2014, the following month. Title IV-E maintenance payments were incorrectly claimed, however, for the month of November. In addition, one (1) non-error case was found to include an ineligible payment because title IV-E maintenance payments were claimed outside of the PUR for the child's placement during July 2014, a month before there was a judicial finding the agency made reasonable efforts to prevent removal.

Title IV-E Requirement: For a child who is judicially removed, a judicial determination that the agency made reasonable efforts to prevent removal is required within 60 days of a child's removal, beginning March 27, 2000 [§471(a)(15) of the Act and 45 CFR §1356.21(b)]. Title IV-E maintenance payments may begin on the first day of the month in which all eligibility requirements are met, including a finding of reasonable efforts by the agency. Title IV-E maintenance payments are not permitted for a period prior to the month the eligibility requirements are met. When a title IV-E maintenance payment is made for an ineligible period, the associated ineligible payments are disallowed and the child's sample case is in error for the ineligible periods in the PUR.

Recommended Corrective Action: State eligibility determination staff should consider reviewing all cases determined eligible and take appropriate action to ensure that title IV-E maintenance payments are not claimed prior to the first day of the month in which all eligibility requirements are met. Particular attention should be directed toward cases in which the child was placed during the last days of a month. The state should consider modifications to the management information system to ensure that all eligibility criteria are met for the period that a title IV-E payment is issued.

Issue #3: Ensuring information in automated systems accessed by eligibility staff is timely and accurate. One (1) case was found to be an error due to title IV-E maintenance payments being incorrectly claimed for a child who did not meet the AFDC eligibility requirements. The state worksheets in the child's case file documented the eligibility workers had correctly determined this case as ineligible based on household income that exceeded the state's AFDC standards. However, FACTS, the Delaware statewide child welfare information system, subsequently reclassified the child as eligible and IV-E payments were claimed. The state was not able to explain the reason for the change in the coding of the child's eligibility status and attributed it to a FACTS system error.

Title IV-E Requirement: Title IV-E maintenance payments may only be claimed for a child that meets all eligibility requirements at 45 CFR §1356.71 and §472 of the Act.

Recommended Corrective Action: The state should consider improvements to address the systems issue which caused an ineligible case to be reclassified as eligible for a title IV-E

payment. The design and monthly production of an automated report of any changes entered into the automated case records of all foster children during the previous month could be considered and the resulting reports reviewed by eligibility determination staff to ensure any change in eligibility status is supported. The state should also consider additional training of DFS staff on the prompt and accurate reporting of changes in placement, court actions and areas which impact eligibility.

Opportunities to improve claiming

Opportunities to increase appropriate claiming were identified in 11 cases reviewed. In five (5) cases it was found the state did not claim from the first day of the month in which all eligibility requirements were met. In those cases, the state started claiming title IV-E maintenance payments the first day of the month following the month in which all eligibility criteria were met. Federal financial participation, in accordance with §472 of the Act, may be claimed from the first day of the month of the child's placement in which all eligibility criteria are satisfied regardless of the actual date during the month in which the requirements were met. The title IV-E eligibility review conducted in 2012 similarly identified 33 cases for which claiming was not initiated until the first day of the month following the month all eligibility requirements were met. The state is commended for the significant progress made to reduce the number of cases for which claiming is delayed and is encouraged to continue to consider practices to reduce future occurrences.

In six (6) other cases reviewed, title IV-E claiming ended during a period of a child's continued eligibility. The state was not aware of the reasons claiming ended for eligible children and is analyzing these cases to identify and address any underlying issue. The state should consider how the eligibility status of a child in those cases was reclassified in FACTS, and whether any updates entered into FACTS, including those unrelated to title IV-E eligibility, might change the funding source of payments.

These cases are not identified as underpayments because of the state's process that intentionally prevents retroactive claiming to the first of the eligibility month. The state characterized its financial and budgeting system as one designed for a budget award process that won't allow the state to replace state funds with federal funds for expenditures that were paid with state funds in a previous budget cycle.

Program Strengths and Promising Practices

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

Automated Data System Interfaces: Delaware has continued the improvement of processes for determining title IV-E eligibility through the development and implementation of an automated data system which allows relevant information in other state systems to be accessed. The system is able to electronically communicate with other state agencies such as the Department of Economic Security and Department of Revenue to obtain information pertinent in determining

financial need and deprivation for AFDC eligibility. In addition, the system electronically sends requests for and receives transmissions of criminal record checks from state and federal law enforcement agencies. These electronic system interfaces, when committed to the database of FACTS, can help eliminate duplicative data collection efforts by staff and increase the authenticity of data used for eligibility determinations.

Eligibility Determinations: Delaware's title IV-E eligibility determination process is fully automated in FACTS. The eligibility unit workers review information entered by field workers, then enter additional information as available from the courts and other interfaces reporting income and resources to facilitate completion of the eligibility determination. Income calculations fully automate the two-step calculation in determining countable income. The automated system creates a historical record of eligibility determinations throughout the life of the case. While further enhancements are needed as cited above to verify continued eligibility, the organization of the eligibility unit and resources available to it is a strength in the state's process.

Quality Assurance: The state has implemented a quality assurance system that includes, on a sampling basis, peer review of case determinations, supervisory review and cases identified as being prone to potential error. The state involves the CIP in review of judicial matters and participation in remedying problem areas. The state is encouraged to continue these quality assurance efforts to increase the accuracy of eligibility determinations and ongoing program improvements.

Disallowance

A disallowance in the amount of \$14,448 in maintenance payments and \$39,095 in related administrative costs of FFP is assessed for title IV-E foster care payments claimed for error cases. An additional amount of \$29 in maintenance payments is disallowed for title IV-E foster care payments claimed improperly for a non-error case.

Delaware 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 Delaware's ongoing efforts to improve its title IV-E foster care eligibility determination process, the Children's Bureau recommends Delaware examine identified program deficiencies and develop measurable, sustainable strategies that target root causes of issues and concerns hindering the state from operating an accurate foster care eligibility program. Appropriate corrective action must be taken in instances of noncompliance with federal laws, regulations and policies.

Keeping informed about current federal laws and regulations is necessary for Delaware to ensure compliance with title IV-E eligibility requirements. It is also necessary to ensure that adequate case documentation and routine case maintenance are current for all eligibility requirements,

including the requisite judicial findings. The CB RO will continue to provide technical assistance to Delaware in these efforts.