

State of Kentucky Secondary Review Title IV-E Foster care Eligibility

Report of Findings for October 1, 2012 – March 31, 2013

Introduction

During the week of September 9, 2013, the Children's Bureau of the Administration for Children and Families (ACF) conducted a secondary review of the state's title IV-E foster care program. The review was conducted in collaboration with the state of Kentucky's Cabinet for Health and Family Services (CHFS) and was completed by a review team comprised of representatives from the state agency, the Children's Bureau central and regional Offices, ACF Regional Grants Management and peer reviewers.

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

This secondary review was conducted as a result of the findings during the primary review that was completed during the week of January 24, 2011. At that time, Kentucky's CHFS was determined not in substantial compliance with title IV-E eligibility requirements for the Period Under Review (PUR) of April 1, 2010 through September 30, 2010. As required, the state submitted a Program Improvement Plan (PIP) to correct the areas found deficient in its title IV-E foster care eligibility program. The Children's Bureau approval of the PIP was based on the state's reports of progress and planned improvements. In particular, the state's PIP focused on issues involving judicial determinations of contrary to the welfare; judicial determinations of reasonable efforts to finalize the permanency plan and documentation of verification of safety requirements for foster care providers with respect to the staff of childcare institutions.

Scope of the Review

The secondary 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, 2012 through March 31, 2013. A computerized statistical sample of 234 cases (150 cases plus 84 over-sample cases) was drawn from state data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. One hundred and fifty (150) cases were reviewed including 119 cases from the original sample and 31 cases from the over sample. Cases were excluded from the original sample because AFCARS data element #59 was incorrectly coded to indicate that title IV-E payments had been made in these cases, when in fact, they had not been. The state provided documentation to support excluding these cases from the review sample and replacing them with cases from the over-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)(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 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 title IV- A plan in effect on 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 §471(a)(20) of the Act and 45 CFR §1356.30.

The case file of each child in the selected sample was reviewed to verify title IV-E eligibility. The foster care provider's file also was examined to ensure the foster family home or child care institution where the child was placed during the PUR was licensed or approved and that safety requirements were appropriately documented. Payments made on behalf of each child also were reviewed to verify the expenditures were properly claimed 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 a non-error case with ineligible payment when the child was not eligible on the activity date outside of the PUR or the child was eligible in the PUR on the service date of an unallowable activity and a title IV-E maintenance was paid for the unallowable activity. 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 two-year filing period specified in 45 CFR §95.7, unless the state elected not to claim the payment or the filing period had expired.

Compliance Findings

The review team determined that 139 of the 150 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Eleven (11) cases were determined to be in error for either part or all of the PUR. The federal funds claimed for title IV-E foster care maintenance payments, including related administrative costs associated with the error cases and non-error cases with ineligible payments, are being disallowed. These data indicate that Kentucky's case error rate of 7.33 percent is less than 10 percent. Therefore, Kentucky is considered to be in substantial compliance.

In addition, seven (7) non-error cases were identified to have periods of eligibility for which the state did not claim allowable title IV-E maintenance payments (underpayments). In accordance with federal regulations at 45 CFR §95.7, the state may claim the eligible payments for the non-error underpayment cases by filing an increasing adjustment on its Title IV-E Programs Quarterly Financial Report (Form CB-496) in the next quarter, if the

claim for the expenditures falls within two years after the end of the calendar quarter within which the state made the expenditure.

Case Summary

The following charts record the error cases, underpayments, reasons for the improper payments, improper payment amounts; and federal provisions for which the state did not meet the compliance mandates. Note that the calculation of erroneous payments is based on the Federal Medical Assistance Percentages (FMAP) rates of the administrative and maintenance costs for the applicable year(s) for each sample case.

Error Cases

Sample Number	Improper Payment Reason and Ineligibility Period	Maintenance Payments (FFP)	Administrative Costs (FFP)
KY #17	<p>Safety requirements for staff of child care institution (CCI) were not met.</p> <p>[See §471(a)(20) of the Act and 45 CFR §§ 1355.20 and 1356.30</p> <p>Ineligible Period: 05/22/12 – 04/12/13</p>	\$17,116	<p>\$2,041</p> <p>Total FFP - \$19,157</p>
KT #24	<p>Financial need was not established for AFDC eligibility. The state did not consider the specified relative's income (in this case, the mother). Case is not eligible for the entire foster care episode because the specified relative's income exceeded the need standard.</p> <p>[See §§472(a)(1) and (3) of the Act and 45 CFR §§ 233.20. and 1356.21 (k) and (l)]</p> <p>Safety requirements for staff of CCI were not met.</p> <p>[See §471(a)(20) of the Act and 45 CFR §§ 1355.20 and 1356.30]</p> <p>Ineligible Period: 02/06/12 to 02/10/13</p>	\$17,767	<p>\$2,301</p> <p>Total FFP - \$20,068</p>

Sample Number	Improper Payment Reason and Ineligibility Period	Maintenance Payments (FFP)	Administrative Costs (FFP)
KY #51	<p>Safety requirements for staff of CCI were not met. [See §471(a)(20) of the Act and 45 CFR §§ 1355.20 and 1356.30]</p> <p>Ineligible Period: 04/22/10 - 10/26/12</p>	\$52,171	<p>\$5,517</p> <p>Total FFP - \$57,688</p>
KY #68	<p>Safety requirements for staff of CCI were not met. [See §471(a)(20) of the Act and 45 CFR §§ 1355.20 and 1356.30]</p> <p>Ineligible Period: 10/01/12 - 03/31/13</p>	\$10,162	<p>\$1,162</p> <p>Total FFP - \$11,324</p>
KY #83	<p>Safety requirements for staff of CCI were not met. [See §471(a)(20) of the Act and 45 CFR §§ 1355.20 and 1356.30]</p> <p>Financial need was not established for AFDC eligibility. In addition, both parents were in the home and there was no deprivation. [See 45 CFR §§ 233.20. and 233.90 and 8.4A, QA #21 of the CWPM].</p> <p>Ineligible Period: 09/03/09 – 12/01/12</p>	\$55,480	<p>\$7,098</p> <p>Total FFP - \$62,578</p>
KY #94	<p>Fingerprint-based checks of the National Crime Information Database (NCID) were not conducted for foster family home (FFH). [See §471(a)(20) of the Act and 45 CFR §§ 1355.20 and 1356.30]</p> <p>Ineligible Period: 09/01/12 – 12/21/12</p>	\$1,912	<p>\$700</p> <p>Total FFP - \$2,612</p>

Sample Number	Improper Payment Reason and Ineligibility Period	Maintenance Payments (FFP)	Administrative Costs (FFP)
KY #116	<p>NCID checks were not conducted for FFH. [See §471(a)(20) of the Act and 45 CFR §§ 1355.20 and 1356.30]</p> <p>Ineligible Period: 04/30/12 – 06/30/13</p>	\$10,951	<p>\$2,677</p> <p>Total FFP - \$13,628</p>
KY #131	<p>First placement: Safety requirements for CCI staff were not met. [See §471(a)(20) of the Act and 45 CFR §§ 1355.20 and 1356.30]</p> <p>Ineligible Period: 5/12 – 11/12</p> <p>Second placement: NCID checks of FFH were not conducted. [See §471(a)(20) of the Act and 45 CFR §§ 1355.20 and 1356.30]</p> <p>Ineligible Period: 11/12 – 6/30/13</p>	\$16,571	<p>\$2,677</p> <p>Total FFP \$19,248</p>
KY #134	<p>CHFS used an amended court order to establish the required contrary to the welfare judicial finding. [§472(a)(2) of the Act; 45 CFR §§ 1356.21(c) & (d)]</p> <p>Ineligible Period: 04/20/11 – 05/31/13</p>	\$16,001	<p>\$4,770</p> <p>Total FFP - \$20,771</p>
KY #143	<p>Safety requirements for staff of CCI were not met. [§471(a)(20) of the Act and 45 CFR §§ 1355.20 and 1356.30]</p> <p>Ineligible Period: 10/31/12 – 06/30/13</p>	\$10,865	<p>\$1,549</p> <p>Total FFP - \$12,414</p>

Sample Number	Improper Payment Reason and Ineligibility Period	Maintenance Payments (FFP)	Administrative Costs (FFP)
KY #156	Safety requirements for staff of CCI were not met. [§471(a)(20) of the Act and 45 CFR §§ 1355.20 and 1356.30] Ineligible Period: 04/25/12 – 06/30/13	\$19,176	\$2,715 Total FFP - \$21,891

Total Maintenance FFP - \$228,172

Total Administrative FFP - \$33,207

Total FFP \$261,379

Underpayments

Sample Number	Reason for Underpayment	Maintenance Payments (FFP)
KY #66	The agency wrongly believed that the AFDC “deprivation” requirement had not been met; however, documentation shows that the child was deprived and title IV-E eligible from the beginning of the foster care episode. [See §§ 472(a)(1) and (3) of the Act and 45 CFR §233.90]. Eligible Period: 10/01/12 – 10/31/12	\$560.34
KY #71	The agency met the requirement of reasonable efforts to finalize the permanency plan timely but did not claim title IV-E. [See §471(a)(15)(B)(ii) and (C) of the Act and 45 CFR §1356.21(b)(2) and (d)]. Eligible Period: 02/01/12 – 03/31/12	\$485.17

Sample Number	Reason for Underpayment	Maintenance Payments (FFP)
KY #84	<p>The agency met the requirement of reasonable efforts to finalize the permanency plan timely but did not claim title IV-E.</p> <p>[See §471(a)(15)(B)(ii) and (C) of the Act and 45 CFR §1356.21(b)(2) and (d)].</p> <p>Eligible Period: 04/01/12 – 04/30/12</p>	\$480.45
KY #86	<p>The agency met the requirement of reasonable efforts to finalize the permanency plan timely but did not claim title IV-E for January and February of 2013.</p> <p>[See §471(a)(15)(B)(ii) and (C) of the Act and 45 CFR §1356.21(b)(2) and (d)].</p> <p>Eligible Period: 01/01/13 – 02/28/13</p>	\$1,125.48
KY #125	<p>Child was fully eligible and placed in an allowable placement.</p> <p>[See §472(b) & (c) of the Act and 45 CFR §§ 1355.20 and 1356.71(d)(1)(iv)]</p> <p>Eligible Period: 11/09/11 – 02/28/13</p>	\$7,922.76
KY #126	<p>Child was eligible for title IV-E; however, CHFS did not claim title IV-E until two months after the child became eligible.</p> <p>[See §§471(a)(15)(b) and 472(a)(2) of the Act and 45 CFR §§1356.21(b), (c), & (d)].</p> <p>Eligible Period: 10/01/12 – 12/31/12</p>	\$1,055.02

Sample Number	Reason for Underpayment	Maintenance Payments (FFP)
KY #168	<p>CHFS met the reasonable efforts to finalize the permanency plan timely. The finding was due 11/12; however, CHFS incorrectly calculated that it was due 09/12. As such, it did not claim title IV-E funds for the eligible period.</p> <p>[See §471(a)(15)(B)(ii) and (C) of the Act and 45 CFR §1356.21(b)(2) and (d)].</p> <p>Eligible Period: 10/01/12 – 10/31/12</p>	\$664.43

Total Maintenance FFP - \$12,293.65

Areas in Need of Improvement

The findings of this review indicate that 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 - Safety Requirements Pertaining to the Background Checks for Staff of Child Care Institutions (CCIs): In eight (8) of the eleven(11) error cases, safety checks were not completed for staff working in CCIs. In these cases, children were placed in CCIs where one or more of the staff had not completed one or more of the background checks as required by CHFS policy. Each child who was placed in such a CCI during the PUR was not eligible for title IV-E, and thus the cases are in error.

Title IV-E Requirement: Consistent with 45 CFR §1356.30 (f), the title IV-E agency must provide evidence that safety considerations with respect to the caregiver staff of the childcare institution have been addressed in accordance with the requirements of the state where the childcare institution is located. The state is responsible for determining the type and frequency of background checks necessary to meet the standards established by the state in which the foster care provider is located. Accordingly, CB will look to governing state provisions to determine how to review for safety considerations under 45 CFR §1356.30 (f). The reviewers examine documentation provided by the state to determine: 1) whether the state's established policies with respect to safety considerations for caregiver staff of childcare institutions were followed for the most recent period of the state's safety check schedule prior to (or, if applicable, during) the PUR; and 2) whether the safety requirements were satisfied before the title IV-E foster care maintenance payments were paid on behalf of a child during the PUR. For purposes of the title IV-E eligibility review, the documentation must verify that all of the governing safety requirements were met prior to the title IV-E maintenance payments being made on behalf of a child in the childcare institution during the PUR.

Recommended Corrective Action: We understand that the CHFS Office of Inspector General (OIG) is responsible for ensuring that CCI staff's background checks are completed fully and in a timely manner. We recommend that CHFS work closely with OIG to ensure that OIG understands and conducts the required safety checks in accordance with state policy, as well as documentation requirements for title IV-E eligibility reviews. The CHFS may consider developing an internal review mechanism that helps ensure that OIG conducts safety checks fully and in timely fashion. We also encourage CHFS to work with its Children's Bureau regional office to ensure that it fully understands the safety requirements for children placed in CCIs.

We are particularly concerned about CHFS' apparent inability to improve upon the safety requirements for children placed in CCIs. Safety requirements for children placed in CCIs caused seven errors during Kentucky's last title IV-E eligibility review, were highlighted in the review's final report and were a key component for its resulting PIP. In light of the

many errors during the 2013 secondary review, we question whether CHFS' last corrective action has been effective and strongly encourage CHFS to ensure that the staff in CCIs have completed both initial safety background checks and re-checks in timely fashion.

Issue # 2: Safety Requirements Pertaining to Foster Family Homes (FFH)

The NCID checks were not consistently conducted on FFHs and title IV-E was paid on behalf of children placed in such homes during the PUR. Three (3) error findings occurred because CHFS could not produce documentation that it had conducted fingerprint-based checks of the NCID for the period it claimed title IV-E maintenance payments on behalf of the children placed in the homes.

Title IV-E Requirement:

The provision at §471(a)(20) of the Act for a fingerprint-based check of the NCID relate to homes newly licensed on or after October 1, 2008 and require documentation to verify that: (1) a criminal records check is completed that includes a fingerprint-based check of the NCID; (2) the foster parent has not been convicted of any of the prohibited felonies listed in §§471(a)(20)(A)(i) and (ii) of the Act; and (3) title IV-E maintenance payments are not made for a period in the PUR prior to these conditions being met. The preferred documentation is the actual results of the CRC, which includes a finger-print based check of the NCID, conducted by the state where the foster parent's home is located. However, other acceptable documentation may include a letter or report signed by appropriate title IV-E agency staff or licensing staff that details the CRC results, electronic documentation of the CRC results maintained in the title IV-E agency's automated information system, or other official evidence that; 1) clearly verifies that a CRC of the NCID was conducted for the period in question, and 2) sufficiently substantiates that the prospective foster parent was not convicted of any of the prohibited felonies listed in sections 471(a)(20)(A)(i) and (ii) of the Act. If the documentation presented is not the actual results of the CRC, inclusion of information such as the date the CRC is completed and the evidence reviewed, and by whom, will greatly improve the quality and validity of the documentation.

Recommended Corrective Action: The CHFS developed an internal protocol that became effective December 1, 2011 in connection with its Program Improvement Plan. The protocol is designed to assist CHFS staff ensure that prospective FFHs have completed background checks before claiming title IV-E funds for a child. We suggest that CHFS, along with OIG, work together to ensure that FFHs that are licensed by private child placing agencies also obtain the required fingerprint-based NCID checks before CHFS claims title IV-E on such children's behalf.

Issue # 3: AFDC (Aid to Families with Dependent Children) Eligibility: There were two (2) error cases where AFDC requirements were not met. In one of the cases, the mother's income exceeded the state's standard of need. In the other case, neither deprivation nor financial need was established.

Title IV-E Requirement: Federal requirements at §§472 (a) (3) of the Act and 45 CFR §§233.20, 233.90 and 1356.21 (l)(1) state that the title IV-E agency must document its determination that a child would have been eligible for AFDC in the home of the specified relative from which the child was removed in or for the month in which the proceedings to

initiate the judicial removal occurred. The child's financial needs must be established based on the income and resources available to the child and the other members included in the AFDC assistance unit. For AFDC eligibility, the AFDC assistance unit's income must not exceed the state's AFDC income standard and the combined resources must not exceed \$10,000. Additionally, in order to be eligible for AFDC, and thus eligible for title IV-E, the child also must be deprived of at least one of his or her parents' support or care. Deprivation must be due to the death, absence, physical or mental incapacity of one parent; or due to unemployment (or underemployment) of the principal wage earner.

Recommended Corrective Action: The CHFS should consider providing additional and recurrent training for eligibility staff related to making AFDC determinations in accordance with the state's 1996 title IV-A AFDC Plan. In addition, CHFS should pay particular attention to ensuring that relevant staff understand that in order to be eligible for AFDC, the child must be both financially needy and deprived of parental support based on the correct specified relative's home.

Issue 4: Underpayments: Seven cases in the Kentucky review resulted in underpayments for two different reasons: In four cases, CHFS had met the requirement for reasonable efforts to finalize the permanency plan and could have claimed title IV-E. However, in all four cases, CHFS stopped claiming title IV-E because it believed that a late permanency hearing always means that the agency could not claim title IV-E. In the three other cases, the child was title IV-E eligible, but we understand that eligibility information was not conveyed to the proper division. As such, CHFS did not know that the children were title IV-E eligible, and therefore did not claim title IV-E on each child's behalf.

Title IV-E Requirement: Federal Regulations at 45 CFR §1356.60 provide that title IV-E foster care maintenance payments may be claimed for allowable costs of expenditures that are covered by the federal definition of foster care maintenance found at §475(4) of the Act. Under §472 of the Act, title IV-E maintenance payments may be claimed from the first day of the foster care placement in the month in which all title IV-E eligibility criteria are met. The payment may be claimed for the entire month when an eligible child has resided in the foster care placement for the entire month. However, if the eligible child is placed on a date in the month other than the first of the month, title IV-E funds may be claimed for the period beginning with the actual date of foster care placement.

Recommended Corrective Action: We recommend that Kentucky put processes into place to ensure that it is maximizing its claiming of title IV-E funds for eligible children. We understand that Kentucky is being cautious in tracking the timeliness of the reasonable efforts to finalize the permanency plan finding. However, in order to maximize its title IV-E maintenance funds, CHFS should ensure that it claims title IV-E until the end of the following month in which the judicial determination is due if it obtains the finding within that following month.

Similarly, we encourage CHFS to examine its internal communication processes so that it ensure that eligible children receive title IV-E funds from the date that they are eligible.

Issue #5: Coding of AFCARS Date Element #59: Thirty-one (31) cases were excluded from the over-sample because no title IV-E foster care maintenance payment was made for a period of activity during the PUR, as documented by the State.

Title IV-E Requirement: The case sample and over-sample drawn for the title IV-E review consist of cases of individual children with a “1” coded in AFCARS data element #59, “*Sources of Federal Financial Support/Assistance for Child,*” for the six-month reporting period of the PUR. As provided for in Appendix A of 45 CFR §1355.40, the AFCARS data element #59 inquires whether title IV-E foster care maintenance payments are paid on behalf of a child in foster care during the PUR. If title IV-E foster care maintenance payments are paid on behalf of the child, the data element should be coded “1.” If title IV-E foster care maintenance payments are not being paid on behalf of the child, the data element should be coded “0.”

Recommended Corrective Action: It is recommended that the State, in answering foster care element #59, ensures a common understanding among staff to only indicate whether a title IV-E foster care maintenance payment was paid on behalf of the child during the reporting period. Staff training and data system monitoring should be conducted to ensure that coding is accurately reflected. Data entry and processing systems should be evaluated to determine internal accuracy and consistency of the data.

The validity of the sample and over-sample depends on the accuracy with which the State agency completes the AFCARS data element #59. It is critical that State agencies report data element 59 accurately.

Program Strengths and Promising Practices:

We noted several improvements to Kentucky’s title IV-E foster care eligibility program during this review. The following positive practices and processes have led to improved program performance and successful program operations:

- CHFS and the Court Improvement Program have worked closely together to improve the quality of court orders and judicial determinations.
- Permanency hearings are held every six months, which ensures that the reasonable efforts to finalize the permanency plan requirement is met timely.

Disallowance

A disallowance in the amount of \$228,172 in maintenance payments and \$33,207 in related administrative costs of Federal Financial Participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases. The total disallowance as a result

of this review is \$261,379 in FFP. The state must also identify and repay any ineligible payments that occurred for the error and non-error cases subsequent to the PUR. No future claims should be submitted on these cases until it is determined that all eligibility requirements are met.

Next Steps:

The Children's Bureau recommends that the state look at the areas of concerns identified in this report and undertake any necessary corrective measures. The Region IV program staff will continue to work with the state to provide technical assistance in addressing the issues and concerns raised during this review.