

**State of Massachusetts
Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for
October 1, 2008 – March 31, 2009**

Introduction

During the week of November 2, 2009, the Children's Bureau (CB), within the Administration for Children and Families (ACF), conducted a primary eligibility review of the Massachusetts title IV-E foster care program. The onsite review was conducted by a team comprised of staff from the CB Central and Regional offices, ACF Region I Office of Grants Management, and the Massachusetts Department of Children and Families (DCF). The review was conducted at DCF's Central Office located in Boston, Massachusetts.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether Massachusetts was in compliance with the child and provider 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 Massachusetts' financial claims to ensure that appropriate payments were made on behalf of eligible children.

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 6-month period under review (PUR) of October 1, 2008 through March 31, 2009. A computerized statistical sample of 100 cases (80 cases plus 20 oversample cases) was drawn from State data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. 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 because no title IV-E foster care maintenance payment was made during the PUR. The State provided documentation to support excluding these cases from the review sample and replacing them with 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 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 childcare 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 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 childcare 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. 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.

Compliance Finding

The review team determined that 70 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Ten (10) cases were determined to be in error for either part or all of the PUR and one (1) non-error case was ineligible for Federal funding for a period of claiming. Accordingly, Federal funds claimed for title IV-E foster care maintenance payments, including related administrative costs, associated with the error cases and non-error case with ineligible payments are being disallowed. Because the number of cases in error is greater than four (4), Massachusetts is found not to be in substantial compliance for the PUR.

As a result, pursuant to 45 CFR §1356.71(i), DCF is required to develop a Program Improvement Plan (PIP) designed to correct those areas determined not to be in substantial compliance. The PIP implementation period may not exceed one year. The PIP will be developed by the State, in consultation with the CB Regional Office (RO), and must be submitted to the RO within 90 days of the date of this report’s cover letter. Once the approved PIP completion date has expired, a secondary review of a sample of 150 title IV-E foster care cases will be conducted.

Case Summary

The following charts record the error cases; 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.

Error Cases

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
5	No documentation verifying that safety considerations with respect to staff of childcare institution have been addressed [§471(a)(20) of the Act; 45 CFR §1356.30(f)]. Ineligible: 12/05/2008-02/26/2009	\$215 Maint. \$0 Admin.
29	No documentation verifying foster care provider was fully licensed [§472(b) and (c) of the Act; 45 CFR §1355.20]. Ineligible: 03/21/2008-01/04/2009	\$414 Maint. \$377 Admin.
42	Foster care provider not fully licensed [§472(b) and (c) of the Act; 45 CFR §1355.20]. Ineligible: 08/19/2008-11/30/2008	\$673 Maint. \$377 Admin.
55	Valid removal did not occur; child remained in removal home 29 days after judicial removal for foster care, but the delayed physical removal was not authorized by the removal court order [45 CFR §1356.21(k)(2)]; Judicial determination of reasonable efforts to prevent removal not met [45 CFR §1356.21(b)(1)]; AFDC eligibility requirements not met [45 CFR § 1356.71(d)(1)(v)]. Ineligible: 10/17/2001-present	\$14,404 Maint. \$9,520 Admin.
56	Foster care provider not fully licensed [§472(b) and (c) of the Act; 45 CFR §1355.20]. Ineligible: 04/05/2008-10/31/2008	\$2,402 Maint. \$2,229 Admin.
57	No documentation verifying that safety considerations with respect to staff of childcare institution have been addressed [§471(a)(20) of the Act; 45 CFR §1356.30(f)]. Ineligible: 09/27/2007-present	\$29,468 Maint. \$3,001 Admin.
58	Foster care provider not fully licensed [§ 472(b) and (c) of the Act; 45 CFR §1355.20]. Ineligible: 9/25/2008-1/31/2009	\$1,212 Maint. \$1,130 Admin.
63	No documentation verifying foster care provider was fully licensed [§472(b) and (c) of the Act; 45 CFR §1355.20]; No documentation that criminal records checks were made for foster parent [45 CFR §§ 1356.30(a)]. Ineligible: 11/19/2008-present	\$1,474 Maint. \$1,507 Admin.
69	Foster care provider not fully licensed [§ 472(b) and (c) of the Act; 45 CFR §1355.20]. Ineligible: 09/16/2005-present	\$12,150 Maint. \$10,539 Admin.
OS-5	Valid removal did not occur; child remained in removal home 5 days after judicial removal for foster care, but the delayed physical removal was not authorized by the removal court order [45 CFR §1356.21(k)(2)]. Ineligible: 06/12/2007-present	\$26,636 Maint. \$6,335 Admin.

Total: \$124,063

Non-error Case with Ineligible Payments

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
67	Judicial determination of reasonable efforts to finalize permanency plan not timely [§472(a)(2)(A)(ii) of the Act; 45 CFR §1356.21(b)(2)]. Ineligible: 07/01/2008-09/30/2008	\$1,077 Maint. \$1,111 Admin.

Total: \$2,188

Areas in Need of Improvement

The findings of this review indicate the State needs to further develop and implement procedures to improve program performance in the following areas. The narrative includes a discussion of the nature of the area needing improvement, the specific title IV-E requirement to which it relates, and recommendations for corrective action by the State.

Issues:

Licensing Requirements for Children Placed in Foster Family Homes

Consistent with the Federal provisions at 45 CFR § 1355.20 and §472(b) and (c) of the Act, to be eligible for title IV-E payments a child must be placed in a title IV-E allowable foster care facility and that facility must meet the standards for full licensure or approval established by the State where it is located. Six (6) cases were in error because the case files and supplemental documents provided by the State did not substantiate that the child’s foster care placement was fully-licensed for the entire time the child resided in the placement during the PUR. Four (4) of these cases involved children placed in foster homes outside Massachusetts. In three (3) of these cases, the State provided an Interstate Compact on the Placement of Children (ICPC) form or a home assessment that showed the other State had approved the home for placement. However, DCF did not provide documentation that these foster care providers fully met the licensing standards of the State where they were located and for the period for which the title IV-E maintenance payments were made. In the remaining case, DCF asserted that the home, which relocated to another State, was authorized to continue to provide foster care under the Massachusetts license in the other State and cited paragraph (4)(d) of ICPC Regulation No. 1 as sufficient to document title IV-E eligibility until a license was issued by the new State. According to the ICPC guidebook, ICPC Regulation No. 1(4)(d) provides that the new state of residence must recognize the validity of the former State’s license, as provided in Article III(d) of the ICPC, unless there is evidence that the foster home is not suitable for a child’s placement. Massachusetts did not provide the required documentation specified in ICPC Article III(d) and, thus, did not establish the ongoing validity of the license it issued to the foster family home that moved outside the State.

Safety Requirements for Children Placed in Foster Care

To ensure that a child is not placed in a foster care setting where the potential caregiver has caused or is likely to cause harm to a child, Federal regulations at 45 CFR §1356.30 require States to examine the potential safety risks posed to the child by a foster care provider. The State agency should document that the foster care provider meets the established safety standards before a child is placed with the foster care provider and must do so before title IV-E payments can be claimed. For childcare institutions, Federal regulations at 45 CFR §1356.30(f) require States to establish procedures that address safety considerations with respect to the staff of childcare institutions. The State must provide documentation verifying that these safety considerations are satisfied for the duration of the child's placement during the PUR. In Massachusetts, childcare institutions are licensed by the Massachusetts Department of Early Education and Care (EEC). EEC regulations require that Criminal Offender Record Information checks are obtained on the staff of licensed childcare institutions.

Two (2) cases did not contain documentation that these safety considerations were met with respect to the staff of the childcare institutions where the child had been placed. In both cases, this resulted in a period of ineligibility for the entire duration of each child's placement in the respective childcare institutions.

In several of the error cases, the child had been living in the foster care setting for extended periods either prior to the full licensure of the placement or prior to the safety requirements being met for the child's placement. These situations raise serious concerns about the administrative oversight provided for the safety of children placed in these settings. The licensing and safety processes are key components in a systematic strategy geared toward keeping children safe in out-of-home placements. Federal provisions at §471 and §472 of the Act require that the child's foster care setting be fully-licensed or approved and that the safety requirements be met prior to the child's placement in the setting. For the title IV-E eligibility review, the State must provide sufficient information to support FFP claimed for a child's foster care placement during the PUR. Documentation of compliance must be provided even when the child is placed in a foster care setting located in another State.

Valid Removals

According to 45 CFR §1356.21(k)(2), a removal has not occurred in situations where legal custody is removed from the parent or relative but the child remains with the same relative in that home under supervision by the State agency. The agency's action to physically remove the child must coincide with (i.e., occur at the same time as) the judicial determination resulting in the child's removal, unless the court order specifies an alternative timeframe for removal. For title IV-E purposes, a valid removal has not occurred in a court-ordered removal when these required provisions for removal are not met and, therefore, the child is ineligible for title IV-E.

Two (2) cases were found to be in error because valid removals did not occur. In each case, the child was judicially removed from the parent's home with a judicial determination that it was contrary to the welfare of the child to remain in the home and the State agency was given placement and care of the child by the court, but the child remained in the parent's home for a

period of time after the judicial finding. No alternative timeframes were specified in the court orders to authorize the delay in the children’s physical removal and placement in foster care. The child in case sample OS-5 remained in the removal home nearly a week after the judicial finding and in case sample 55 remained in the home nearly a month after the judicial finding. Case 55 also did not document the judicial finding of “reasonable efforts to prevent removal” was obtained as required under §472(a)(2)(A) of the Act and 45 CFR §1356.21(b)(1) and continued deprivation of parental support or care as required under §472(a)(3) of the Act and 45 CFR §1356.71(d)(1)(v). The invalid removals in both cases resulted in ineligibility under title IV-E for the entire foster care episode for each child.

Recommendations

The State is reminded that, consistent with §472 of the Act, FFP under title IV-E may not begin until the first day of the month in which full compliance with the eligibility requirements in Federal statute and regulation is met. It is the State’s responsibility to ensure that claims for FFP are properly substantiated. Staff training will help to ensure that workers make eligibility decisions based on the elements needed for compliance and will help to eliminate the authorization of payments prior to establishing compliance with the requirements. The State also is strongly urged to conduct systematic monitoring of its programmatic and financial operations to ensure required actions and supporting paperwork are completed timely and that title IV-E claims are submitted only for those cases meeting all applicable requirements.

Strengths and Promising Practices

Each of the cases reviewed was found to have the required initial determinations for Aid to Families with Dependent Children (AFDC). The State has developed a reliable automated Title IV-E Application system for determining and documenting financial need and deprivation of parental support according to the State’s July 16, 1996 guidelines for AFDC, as required for title IV-E eligibility determinations of children removed from the home and placed into foster care. The automated system provides access to demographic information from DCF’s FamilyNet and family financial information through the TANF and Medicaid automated systems operated by other State agencies. The automated worksheets provide clear documentation of the eligibility decision, basis of the decision, and period of eligibility. Only one case was cited with improper payments because an AFDC-related requirement was not met prior to the PUR. However, this case was found to be ineligible for the entire placement episode due to another eligibility factor.

Disallowances

A disallowance in the amount of \$89,048 in maintenance payments and \$35,015 in related administrative costs of Federal financial participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of \$1,077 in maintenance payments and \$1,111 in related administrative costs of FFP are disallowed for title IV-E foster care payments claimed improperly for the non-error cases. The total disallowance as a result of this review is \$126,251 in FFP. The State also must 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

DCF should thoroughly examine identified program deficiencies and develop measurable, sustainable strategies that target the root cause of problems hindering the State from operating a more accurate foster care eligibility program. The Children's Bureau Boston Regional Office will be in contact with DCF to discuss the process for development, assessment, and approval of the PIP required as a result of this eligibility review.