

State of Massachusetts
Department of Children and Families
Title IV-E Foster Care Eligibility
Primary Review
Report Findings for October 1, 2014 – March 31, 2015

Introduction

During the week of November 30, 2015, the Children’s Bureau (CB), Administration for Children and Families (ACF), conducted a primary review of the Massachusetts title IV-E foster care program. The review was conducted in Boston, Massachusetts in collaboration with the Massachusetts Department of Children and Families (DCF) and was completed by a review team comprised of representatives from Massachusetts DCF, CB Central and Regional Offices and ACF Regional Grants Management Office.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether Massachusetts’ 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 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 cases for which a title IV-E maintenance payment was claimed for an activity during the six-month period under review (PUR) of October 1, 2014 through March 31, 2015. A computerized statistical sample of 100 cases (80 cases plus 20 oversample cases) was drawn from the state data submitted to the Adoption Foster Care Analysis and Reporting System (AFCARS) for the above period. Eighty (80) cases were reviewed, which consisted of seventy-nine (79) of the original sample plus one (1) oversample case. The oversample case was selected because one case in the original sample was excluded since it did not have a title IV-E foster care maintenance payment for a period of activity during the PUR.

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 information was examined to ensure the foster family home or childcare institution where the child was placed during the PUR was licensed and that safety requirements were appropriately documented. Payments made on behalf of each child also were reviewed to verify 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 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 provided Massachusetts more time following the onsite review to submit additional documentation for cases identified during the onsite review 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, there were seventy-eight (78) cases for which the state was required to submit additional documentation verifying that the state maintained responsibility of care and placement for the entire PUR for the child on whose behalf a title IV-E foster care maintenance payment was made. The state submitted the required documentation to the regional office for these seventy-eight (78) cases; therefore, the responsibility of care and placement requirement is considered met for these cases.

Compliance Finding

The review team determined that 71 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Nine (9) cases were determined to be in error for either part or all of the PUR. One (1) case was ineligible for federal funding for a period of claiming outside the PUR and one (1) underpayment was identified in the PUR.

The Children's Bureau has determined that the Massachusetts title IV-E foster care program is not in substantial compliance with federal eligibility requirements for the PUR. Non-substantial compliance in a primary review is established when the total number of error cases exceeds four. Additional findings for non-error cases with ineligible payments are not considered in determining whether the state's review results are in substantial compliance with federal requirements.

Case Summary

The following chart records the error cases; non-error case with ineligible payments; underpayment case; reasons for the improper payments; improper payment amounts; and federal provisions for which Massachusetts DCF did not meet the compliance mandates. The 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 & Eligibility Period	Improper Payments (FFP)
1	Deprivation not established for AFDC eligibility. [§472(a)(1) and (3) of the Act and 45 CFR 1356.21(l)] Ineligible: Entire foster care episode Reported Disallowance Period: 1/12/13 – 3/31/15	\$10,375 Maint. \$19,716 Admin.
11	Safety requirements for foster care provider were not met. [§471(a)(20) of the Act and 45 CFR 1356.30] Ineligible: 11/20/13 – 10/15/14	\$4,184 Maint. \$7,297 Admin.
13	Title IV-E agency did not have responsibility and care for placement of child. [§472(a)(2)(B)(i) of the Act and 45 CFR 1356.71(d)(a)(iii)] Ineligible: 2/5/15 – 3/5/15	\$517 Maint. \$1,490 Admin.
32	Insufficient documentation verifying safety considerations with respect to the caregiver staff of a childcare institution. [§471(a)(20) of the Act and 45 CFR 1356.30(f)] Ineligible: 1/5/15 -3/31/15	\$10,119 Maint. \$2,235 Admin.
47	Insufficient documentation verifying safety considerations with respect to the caregiver staff of a childcare institution. [§471(a)(20) of the Act and 45 CFR 1356.30(f)] Ineligible: 8/13/14 – 10/5/14 and 12/24/14 – 2/4/15	\$9,874 Maint. \$1,475 Admin.
53	Financial need not established for AFDC eligibility. [§472(a)(1) of the Act and 45 CFR 1356.21(l)] Ineligible: Entire foster care episode Reported Disallowance Period: 11/20/13 – 3/31/15	\$4,522 Maint. \$8,119 Admin.
54	Foster Home not fully licensed during the child’s placement. [§472(b) & (c) of the Act and 45 CFR 1356.71(d)(1)(iv)] Ineligible: 10/1/14 – 10/31/14	\$322 Maint. \$745 Admin.
57	Insufficient documentation verifying safety considerations with respect to the caregiver staff of a childcare institution. [§471(a)(20) of the Act and 45 CFR 1356.30(f)] Ineligible: 1/12/15 – 3/5/15	\$5,436 Maint. \$1,490 Admin.
65	Non-compliance with AFDC removal from specified relative. [§472(a)(1) and (3) of the Act and 45 CFR 1356.21(k) & (l)] Ineligible: Entire foster care episode Reported Disallowance Period: 5/20/11 – 3/31/15	\$9,338 Maint. \$12,937 Admin.

\$54,687 Maint.
\$55,504 Admin.
\$110,191 Total

Non-Error Case with Ineligible Payments

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
52	Child in an unlicensed foster home. [§472(b) & (c) of the Act and 45 CFR 1356.30 and 1356.71(d)(1)(iv)] Safety requirements for foster care provider were not met. [§472(a)(20) of the Act and 45 CFR 1356.30 Ineligible: 6/24/13 – 12/31/13	\$1,411 Maint. <u>\$2,910 Admin.</u> \$4,321 Total FFP

Underpayment Case

Sample Number	Underpayment Payment Reason & Eligibility Period	Underpayment (FFP)
51	Judicial determination of Reasonable efforts to finalize permanency plan. [471(a)(15)(B)(ii) and (C) of the Act; 45 CFR 1356.21(b)(2) & (d)] Judicial determination due October 2014. The determination was obtained in March 2015 therefore child was eligible for foster care payments for March 2015 however payments were made but not claimed.	\$277 Maint.

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: Lack of Documentation of Safety Considerations for Staff of a Childcare Institution.

Three (3) cases were found to be in error because the licensing agency failed to provide sufficient documentation that the agency’s safety checks were completed, in accordance with their policy, for staff of a childcare institution prior to the period for which title IV-E foster maintenance payment was made on behalf of the child. The state title IV-E agency contracts with the state’s Department of Early Education and Care (EEC) to license their childcare institutions. The EEC regulations require all of the facilities it licenses to obtain a Criminal Offender Record Information check (CORI) and a Child Abuse Central Registry Background Record check on its facility staff. The documentation is maintained in the personnel records of EEC and verified when EEC conducts its license renewal. Since 2012, EEC has completed affidavits to document that it reviewed a sample of files for the required safety checks. The EEC’s license renewal policy states that as part of the renewal process the licensor is required to review the facility’s records and document the review on checklists prior to the licensing study visit. It also states that the licensor will review 20 percent of the facility’s current personnel records and that the licensor should review a minimum of 10 and a maximum of 25 personnel records and if the total number of current records is fewer than 10, the licensor should review all records. The affidavits for three group homes for children in the IV-E review sample showed that the licensor did not meet this minimum sampling requirement.

Title IV-E Requirement: Federal provisions at 45 CFR 1356.30(f) require that the state provide evidence that the safety considerations with respect to the staff of the childcare institution have been addressed in accordance with the requirements of the state in which the childcare institution is located. Documentation must verify that all of the governing safety requirements were met prior to making any title IV-E payments on behalf of the child. Documentation can include, but is not limited to, such official material as a checklist or monitoring report completed by the licensing authority; a letter or report signed by appropriate title IV-E agency staff or licensing staff that details the background check results; or electronic data maintained in the title IV-E agency's automated information system that records the results of the evidence examined to determine compliance with the governing safety requirements. The documentation will be accepted based upon the degree that the documentation clearly specifies the safety measures completed, the date completed and the evidence reviewed (and by whom). A mere review of the title IV-E agency's or childcare institution's policy and regulation, however, is not sufficient to document compliance with the safety requirement. A statement by the title IV-E agency staff that simply declared "all background checks had been completed and persons cleared" also is not sufficient.

Recommended Corrective Action: As stated above, the state contracts with EEC to license childcare institutions. In the error cases cited above, EEC failed to adhere to its licensing policy regarding the minimum number of records required to be reviewed to verify background safety checks requirements were sufficiently satisfied for full licensure. The Children's Bureau recommends that the state make efforts to work with EEC to ensure the state's CORI and Child Abuse Central Registry background records checks policies and procedures are strictly adhered to during the license renewal process in order to verify that all safety requirements are completed and correctly documented for the staff at these facilities.

Issue #2: *Child in unlicensed placement.* One (1) case was found to be in error because foster care payments were made for a month in which the foster home was not fully licensed. The child was placed in the foster home July, 2014 and the foster care license was issued in November, 2014. However, DCF claimed foster care payments for the first month of the PUR, October 2014. Also, there was one (1) non-error case with ineligible payments identified because the foster home was not fully licensed and the safety requirements for the foster care provider were not met.

Title IV-E Requirements: Federal provisions at §472(b) & (c) and 45 CFR 1356.71(d)(1)(iv) require the child to be residing in a foster family home or childcare institution that is fully licensed for the duration of the child's placement. Federal financial participation may not begin until the first day of the child's placement in the foster care setting in the month in which full compliance with the title IV-E eligibility requirements are met by the child.

Recommended Corrective Action: The state must take action to ensure foster care payments are only made for otherwise eligible children in a fully licensed placement. The Children's Bureau suggests DCF ensure that the required documentation is on file prior to initiating any title IV-E claims on behalf of a child and to have procedures in place to monitor the accuracy of its eligibility determination and claiming process.

Issue #3: *Safety Requirements for Foster Parents.* One (1) case was found to be in error because the state failed to document that safety considerations were met by successfully completing the required fingerprint-based check of the National Crime Information Databases (NCID) for foster

parents who were being relicensed as their foster care license had been expired for more than six months.

In accordance with the DCF policy on background records check, if a foster or pre-adoptive family home closes for a period of six months or longer the home is not considered to be continuously licensed and such checks will need to be repeated on the foster/pre-adoptive parents. In this case, fingerprint checks were done prior to initial licensure in May, 2012 and the home was licensed from 11/13/12-1/30/13. The foster home closed on 1/30/13 and re-opened more than six months later on 9/27/13. According to state policy on license expiration, the foster parents were therefore required to undergo new criminal background checks for the new licensing period. However, there was no documentation that this required fingerprint-based check for the foster parents had been completed.

Title IV-E Requirement: Federal provisions at §471(a)(20) of the Act and 45 CFR 1356.30 require the state to provide documentation that criminal records checks have been conducted on all prospective foster parents before the child is placed and before title IV-E maintenance payments are claimed for the period of the child's stay. Fingerprint based checks must be conducted for all prospective foster parents licensed after October, 1, 2008. For title IV-E eligibility purposes, once the prospective foster family home is licensed, subsequent criminal record checks are not required as long as the home is continuously licensed. However, if a foster family home license expires and cannot be renewed pursuant to state requirements, the foster parent(s) must be considered "prospective" with a new application for licensure and a new criminal background check must be conducted in connection with the new license.

Recommended Corrective Action: When placing children in foster homes, the state must ensure that all required criminal background checks have been completed prior to placement and the state's claim for title IV-E maintenance payments for the child in the placement. The Children's Bureau suggests DCF strengthen its system to ensure that the required documentation is on file prior to initiating any title IV-E claims on behalf of a child and to have procedures in place to monitor the accuracy of eligibility determination and claiming processes.

Issue #4: Lack of Placement and Care Responsibility: One (1) case was found to be ineligible for a period of claiming because DCF continued foster care payments after custody ended because the child had entered a guardianship setting. The child entered care through a court order before the PUR and remained in agency custody until February, 2015 when the guardianship was granted. However, DCF continued to claim reimbursement for title IV-E foster care payments for an additional month after the guardianship was established.

Title IV-E Requirement: Federal provisions at §472(a)(2)(B) of the Act and 45 CFR 1356.71 (d)(1)(iii) require that the responsibility for placement and care of a child be with the state agency administering the title IV-E plan approved under §471 of the Act. For the title IV-E eligibility review, this responsibility must be for the entire period of the child's placement during the PUR for which a title IV-E maintenance payment is made and must be clearly indicated in a court order or voluntary placement agreement.

Recommended Corrective Action: The state should take steps to ensure that DCF has placement and care responsibility for each child on whose behalf a title IV-E foster care payment is made and to ensure foster care payments are not claimed when DCF no longer has placement and care

responsibility. The Children's Bureau suggests DCF strengthen its procedures to monitor the accuracy of eligibility determination and claiming procedures.

Issue #5: AFDC Eligibility: Three (3) cases were found to be ineligible for their entire foster care placement episode because the household from which the child was removed was not eligible for Aid to Families with Dependent Children (AFDC) during the month the court proceedings were initiated. Two (2) cases were not eligible because the income of the removal household exceeded the Massachusetts AFDC need standard. Another case was not eligible because it did not meet the AFDC unemployed parent deprivation factor as the documentation in the case record showed that the parent was as employed more than 100 hours during the month of removal.

Title IV-E Requirement: The purpose of the title IV-E foster care program is to provide financial assistance to title IV-E agencies for the care of children in foster care who meet the eligibility requirements for the former AFDC program. Thus, a child's eligibility for title IV-E maintenance is predicated partially on the child's eligibility for AFDC. After establishing the AFDC family unit, the title IV-E agency must determine financial eligibility based on the income and resources available to the members of the AFDC family unit during the month of the initiation of court proceedings to remove the child from his/her home. The title IV-E agency must also establish that the child is deprived of parental support or care. As with financial need, the determination of deprivation must be established based on the circumstances of the child's parents that existed during the month the court proceedings leading to the requisite judicial determinations were initiated for a child removed due to a court order.

Recommended Correct Action: The Children's Bureau recommends the state provide its eligibility staff additional training in making AFDC determinations in accordance with the state's 1996 AFDC plan. The state needs to clarify and document AFDC financial need for the month that the court action to remove the child was initiated or the voluntary placement agreement was signed. Also, additional training should focus on how to establish deprivation and financial need. Staff should be comparing household income to the correct AFDC standard for the appropriate household size and ensuring that the unemployed parent deprivation factor in a two-parent household be determined only when the parent is employed for less than 100 hours during the month.

The Children's Bureau also recommends that the state develop clearer identification on automated eligibility screens of the month for which AFDC eligibility is being documented. During the onsite review, members of the review team had difficulty identifying the month for which AFDC eligibility was being documented. For DCF to remain in compliance with title IV-E state plan requirements, AFDC eligibility must be determined in the month courts proceedings are initiated leading to a child's removal. The DCF should consult with child welfare staff in the Children's Bureau Region 1 office on how to develop clearer documentation of the AFDC eligibility month.

Additional Concerns:

Title IV-E Agency Responsibility for Placement and Care: As noted above, federal statutes at §472(a)(2)(B) of the Act require the responsibility for placement and care of a child to be vested with the title IV-E agency or another public agency that has a written agreement, as provided for under §472(a)(2)(B)(ii) of the Act, in effect with the title IV-E agency. Evidence of

responsibility for placement and care of the child can be documented in the voluntary placement agreement, court order, or court transcript. For the title IV-E eligibility review, this responsibility must be for the entire period of the child's placement during the PUR. During the review, the documentation provided by the state agency to meet this requirement was the Care and Protection/Temporary Mittimus (Mitt) order issued by the court. The language in this order indicated a specific time period for which the child was committed to the DCF. The Mitt states in part, "the child be committed to the Department of Children and Families until the above date pending said further hearing on the child petition". During the onsite review, 78 cases did not initially contain copies of Mitts to establish that the state had ongoing responsibility for placement and care for the child during the PUR. As a result, these cases were assigned a preliminary finding of undetermined. As stated previously in this report, the state submitted the additional documentation for these cases to demonstrate the state maintained responsibility of care and placement of the child for the entire PUR, thus documenting that the requirement was met. The Children's Bureau recommends that the state establish a system of case review to ensure that documentation of this requirement is included in the case file for the entire time period in which a foster care maintenance payment is claimed for an otherwise-eligible child.

Case Record Review: Our review of the eligibility files during the review revealed that the state needs to include additional documentation in the case files for future reviews in order to provide more complete information that will assist reviewers in making an accurate determination about a child's title IV-E eligibility. Absent the complete case records, or even the complete portion of the record for the PUR, reviewers raised questions that required agency staff to find the portions of the file necessary to answer those questions. We acknowledge that the state has developed a fully automated system with the exception of the court and residential licensing information. Since most of the case record information has been entered into the state's SACWIS system (Family Net), DCF provided reviewers with screen prints of relevant eligibility information. If additional information was required, the reviewers were able to access Family Net with assistance from DCF staff to find the information. However, during this review the lack of documentation in the case files for eligibility requirements related to AFDC, court orders and residential placement information created challenges for both the state and the review team.

The Title IV-E Foster Care Eligibility Review Guide (the Guide) provides guidance to states on how to prepare the case files for review. The Guide indicates that the entire sample case record must be available at the review site so that the reviewers will have access to pertinent case material. The entire case record includes the state's official records pertaining to the child's title IV-E eligibility, child welfare services, and foster care provider licensure and safety. The Guide also instructs states to have the complete case file available to allow for a thorough review of the child's placement beginning from the entry into foster care and extending throughout the life of the foster care episode. The complete case record can provide insight into how the title IV-E agency implements the foster care maintenance payment program which can lead to immediate opportunities for onsite technical assistance for the title IV-E agency. It should be noted that the Children's Bureau identified this same issue as an area needing improvement in the state's secondary IV-E review report issued in December 2012. The Children's Bureau authority for acquiring access to sample case records is included in federal regulations at 45 CFR Parts 92 and 1356. A child can be deemed ineligible for title IV-E entitlements and associated ineligible payments may be disallowed without sufficient documentation to support compliance. For future title IV-E reviews, we expect DCF to make available the complete case record for each sampled case.

Program Strengths & Promising Practices

Automated Data System Interface: Massachusetts has developed a successful process for obtaining the required Criminal Records Check (CRC), which includes a finger-print based check of the NCID beginning October 1, 2008. The CRC results are sent from the FBI to the state agency through the Massachusetts State Police automated computer system. This automated computer system sends the information to the state agency via the Background Records Check unit terminals. The results are then disseminated based on the state's policies and procedures.

Court Information: Court documents clearly explained the contrary to welfare and reasonable efforts findings. All required judicial findings were obtained timely in the sample cases reviewed. This was also an area of strength in the prior review so the state is commended for maintaining meaningful collaboration with the courts and working closely to educate the judiciary to promote timely and quality judicial findings.

Disallowances

A disallowance in the amount of \$54,687 in maintenance payments and \$55,504 in related administrative costs of FFP is assessed for title IV-E foster care payments claimed for the error cases. An additional amount of \$1,411 in maintenance payments and \$2,910 in related administrative costs of FFP is disallowed for payments claimed improperly for the non-error case with ineligible payments.

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

Next Steps

Pursuant to 45 CFR 1356.71(i), Massachusetts is required to develop a Program Improvement Plan (PIP) designed to develop measurable, sustainable strategies that target the root cause of problems hindering the state from operating an accurate foster care eligibility program. The PIP period is not to exceed one (1) year. It will be developed by the state, in consultation with the Children's Bureau Region 1 child welfare staff, and must be submitted to the regional office within 90 calendar days from the date the state receives the disallowance notice of non-substantial compliance accompanying this report of review findings.

The PIP must include the following elements, as noted in federal regulations at 45 CFR 1356.71(i):

- specific goals for improvement
- action steps needed to correct each identified weakness or deficiency
- time frames for completing each action step

The Children's Bureau does not require a state to use a particular format when developing its PIP. The PIP, however, must provide sufficient detail and context to ensure the Children's Bureau regional office and state staff can work in partnership to monitor the state's progress in implementing and completing the PIP.

The Children's Bureau, to assist state staff with the PIP process, has developed a standard template that is recommended for use in preparing the PIP document for initial submission and for periodic reporting of progress to the Children's Bureau regional office. The suggested template and instructions for completing it are enclosed with this report.

A secondary review of 150 sample cases will be conducted, in accordance with 45 CFR 1356.71(j)(2), following the expiration of the state's approved PIP completion date.