Introduction

During the week of April 4, 2016, the Children’s Bureau of the Administration for Children and Families conducted a primary review of Minnesota’s title IV-E foster care program. The title IV-E foster care review (IV-E review) was conducted in collaboration with the state and was completed by a review team comprised of representatives from the Minnesota Department of Human Services Child Safety and Permanency Division, the Children’s Bureau Central and Regional Offices and a cross-state peer reviewer.

The purposes of the IV-E review were (1) to determine whether the Minnesota title IV-E foster care program is in compliance with eligibility requirements as outlined in 45 CFR §1356.71 and §472 of the Social Security Act (the Act); and (2) to validate the basis of the state’s financial claims to ensure appropriate payments were made on behalf of eligible children.

Scope of the Review

The IV-E review encompassed a sample of the state’s foster care cases in which a title IV-E maintenance payment was made for an activity that occurred in the six-month period under review (PUR) of April 1, 2015-September 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, which consisted of 77 cases from the original sample plus 3 oversample cases. Three cases were excluded from the original sample because no title IV-E foster care maintenance payment was made for a period of activity during the PUR. The state provided documentation to support excluding these cases from the review sample and replacing them with cases from the oversample as all of the excluded cases had title IV-E payments that had been backed-out prior to the state receiving its 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 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 of 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 two-year filing period specified in 45 CFR 95.7 and the filing period had not expired.

The Children’s Bureau and Minnesota agreed the state would have two weeks following the onsite review to submit additional documentation for a case during the onsite review identified as in error, in “undetermined” status, or not in error but with ineligible payments.

Compliance Finding

The review team determined 77 of the 80 cases met all eligibility requirements (i.e., were deemed non-error cases) for the PUR. Three cases were determined as in error for not meeting eligibility requirements either for periods only during the PUR or for the entire foster care episode. Four non-error cases met eligibility requirements for the PUR but were found to have periods in the foster care episode for which title IV-E maintenance payments were improperly claimed.

The Children’s Bureau has determined the Minnesota title IV-E foster care program is in substantial compliance for the PUR. Substantial compliance in a primary IV-E review means the total number of error cases is four or fewer cases determined as not meeting eligibility requirements for the PUR. The supplemental findings for non-error cases with ineligible payments were not considered in determining the state’s level of compliance with federal requirements. Since the state is in substantial compliance, a secondary review of 150 sample cases is not required. The next primary review will be held in three years.
In addition to the above three error and four non-error cases with ineligible payments, one of the non-error cases also had a period of eligibility for which the state did not claim allowable title IV-E maintenance payments.

**Case Summary**

The following charts record the improper payment cases comprised of: error cases, non-error cases with ineligible payments and underpayments; improper payment reasons; improper payment amounts; and federal provisions for which the state did not meet 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 years for each sample case.

**Error Cases:**

<table>
<thead>
<tr>
<th>Sample Number</th>
<th>Improper Payment Reason &amp; Ineligibility Period April 1, 2015-September 30, 2015</th>
<th>Improper Payments (FFP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>#23</td>
<td>A judicial determination to the effect that the title IV-E agency has made reasonable efforts to finalize the permanency plan was not made by the Olmsted County courts within the required 12-month period. The finding was due by 8/20/2014 and was made 10/27/15. [§472(a)(2)(A)(ii) of the Act; 45 CFR §1356.21(b)(2)]</td>
<td>$8,137.00 Maint. $7,620.00 Admin.</td>
</tr>
<tr>
<td></td>
<td>Ineligible: 09/1/14-09/30/15</td>
<td></td>
</tr>
<tr>
<td>#42</td>
<td>AFDC eligibility not established for the child as the specified relative’s income exceeded the state’s AFDC income standard in the month of the initiation of court proceedings for removal. However, Beltrami County continued to claim IV-E foster care maintenance payments. [§472(a)(3)(B) of the Act; 45 CFR §1356.21(l)(1)]</td>
<td>$14,108.00 Maint. $0 Admin</td>
</tr>
<tr>
<td></td>
<td>Ineligible: Entire Foster Care (FC) episode; Reported Disallowance Period: 05/29/2014—05/31/2015</td>
<td></td>
</tr>
<tr>
<td>#56</td>
<td>AFDC eligibility not established for the child as the adoptive mother’s home did not meet the state’s AFDC financial requirements in the month the voluntary placement agreement was signed, therefore, making the child ineligible for title IV-E funding for the entire FC episode. [§472(a)(3)(B) of the Act; 45 CFR §1356.21(l)(1)]</td>
<td>$9,369.00 Maint. $2,935.00 Admin.</td>
</tr>
<tr>
<td></td>
<td>Ineligible: Entire FC episode; Reported Disallowance Period: 04/01/2015-08/30/2015</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total:</strong> Maint. $31,614.00 Admin. $10,555</td>
<td></td>
</tr>
</tbody>
</table>
Non-error Cases with Ineligible Payments:

<table>
<thead>
<tr>
<th>Sample Number</th>
<th>Improper Payment Reason &amp; Ineligibility Period April 1, 2015-September 30, 2015</th>
<th>Improper Payments (FFP)</th>
</tr>
</thead>
<tbody>
<tr>
<td># 55</td>
<td>A judicial determination of reasonable efforts to finalize permanency plan was not made timely prior to the PUR. The judicial finding was due by 02/01/2015 and was made 04/01/2015. [§472(a)(2)(A)(ii) of the Act; 45 CFR §1356.21(b)(2)]</td>
<td>$981.00 Maint. $587.00 Admin.</td>
</tr>
<tr>
<td>#OS2</td>
<td>Prior to the PUR, fingerprint criminal background checks of the National Crime Information Databases (NCID) were not completed on the foster parents by the White Earth Tribal Agency. Title IV-E foster care maintenance and administration costs were made during the time the child was in an unallowable placement. [§ 471(a)(20)(A) of the Act and 45 CFR § 1356.30(f)]</td>
<td>$903.00 Maint. $1,150.00 Admin.</td>
</tr>
<tr>
<td>#69</td>
<td>Prior to the PUR, fingerprint criminal background checks of the NCID were not completed on foster parents by the Red Lake Tribal Agency. Title IV-E foster care maintenance and administration costs were made during the time the child was in an unallowable placement. [§ 471(a)(20)(A) of the Act and 45 CFR § 1356.30(f)]</td>
<td>$6,462.00 Maint. $6,888.00 Admin.</td>
</tr>
<tr>
<td>#78</td>
<td>Prior to the PUR, fingerprint criminal background checks of the NCID were not completed on foster parents by the White Earth Tribal Agency. Title IV-E foster care maintenance and administration costs were made during the time the child was in an unallowable placement. [§ 471(a)(20)(A) of the Act and 45 CFR § 1356.30(f)]</td>
<td>$648.00 Maint. $1,150 Admin.</td>
</tr>
</tbody>
</table>

Ineligible: 03/01/2015-03/31/2015

Ineligible: 01/24/2014-03/01/2014

Ineligible: 01/24/2014-02/28/2014

Total: $8,994.00 Maint. $9,775.00 Admin
Underpayment Case:

<table>
<thead>
<tr>
<th>Sample Number</th>
<th>Improper Payment Reason &amp; Ineligibility Period April 1, 2015-September 30, 2015</th>
<th>Improper Payments FFP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>#OS2</td>
<td>White Earth Tribe did not claim foster care maintenance payment even though the child was eligible and in a title IV-E allowable placement, resulting in an underpayment.</td>
<td>$732.00 Maint.</td>
</tr>
</tbody>
</table>

Eligible: 06/01/2014-06/30/2014

Total: $732.00 Maint.

Areas Needing Improvement

**Issue #1:** Timeliness of Judicial Determinations Regarding Reasonable Efforts to Finalize a Permanency Plan. One case was in error and one non-error case had ineligible payments because the judicial requirement of “reasonable efforts to finalize a permanency plan” was not satisfactorily met. Minnesota, like most states, incorporated the federal requirement for a judicial determination of “reasonable efforts to finalize a permanency plan” into its court proceeding for the 12-month permanency hearing. In both cases the court conducted permanency hearings within the 12 month period, but during the court hearing and in the resulting court order the court failed to make the required judicial determinations that the agency made reasonable efforts to finalize the permanency plan.

**Title IV-E Requirement:** For a child who is judicially removed and remains in foster care for 12 months or more, federal provisions at §472(a)(2)(A) of the Act and 45 CFR 1356.21(b)(2) require the state to obtain a judicial determination of whether the state made “reasonable efforts to finalize a permanency plan” for the child. The judicial finding must occur at regular 12-month intervals for the duration of the foster care episode and no later than 12 months from the month in which the prior determination is obtained. Judicial determinations should reflect the court’s judgment as to whether the agency’s activities were meaningful and consistent with the permanency plan and whether they were sufficient to bring about the achievement of the permanency goal for the children. If the judicial determination of “reasonable efforts to finalize” is not made or is not timely, the child becomes ineligible from the beginning of the first month after it is due and remains ineligible until the judicial determination is made.

**Recommended Corrective Action:** The state should continue to work with its court partners to ensure that the courts’ judicial determinations regarding the agency’s reasonable efforts to finalize a permanency plan are timely and explicitly documented in a court order or court transcript. Staff training with the counties and tribes around the required judicial determinations also will help to ensure workers are making eligibility decisions based on the correct elements needed for compliance and to eliminate the authorization of payments prior to establishing compliance regarding the required judicial determinations. The state should note that the requisite judicial determination need not be tied to a permanency or other court hearing. The judicial determination may be rendered by the court at any point during the 12-month period. The state should continue to develop and implement procedures to ensure that courts make
judicial determinations of “reasonable efforts to finalize the permanency plan” regardless of the timing of the permanency hearing.

**Issue #2:** AFDC eligibility was not met. Two cases were determined to be in error for the entire foster care episode due to the AFDC eligibility requirements not being met. The eligibility determination for one of these cases also was not completed correctly by the state. In sample case 56, the state agency incorrectly advised the counties and tribes that all cases that were part of the state’s former child welfare waiver demonstration project, called the Minnesota Permanency Demonstration Project (MnPD), were categorically eligible for IV-E should a child re-enter foster care after having been adopted or legal guardianship having been transferred to a relative through this waiver program. This is not consistent with title IV-E policy. When a child is discharged from foster care and later returns, title IV-E policy requires that a new determination of eligibility be made in accordance with §472 (a) of the Act and be based on the family from which the child is recently removed. (See CB Child Welfare Policy Manual, sections 8.3A.10, QA #2 and 8.5B, Q/A #1). As a direct result of the state’s misapplication of title IV-E policy, this case’s eligibility determination was based on the natural mother’s home from the previous foster care episode and not the adoptive mother’s home for the current foster care episode. (The adoptive mother signed a voluntary placement agreement March 4, 2015.) The adoptive mother’s home exceeded the state’s financial AFDC standards, therefore making the case ineligible for title IV-E foster care funds.

In the second case, sample 42, a county eligibility worker had correctly determined through the uses of the state’s eligibility system and the state worksheets located in the child's case file that the case was ineligible based on the mother’s household income exceeding the state's AFDC standards. However, the county classified the child as eligible for title IV-E payments and began claiming. The state was unable to determine how the county was able to override Minnesota’s automated systems, MAXIS and SSIS, that are used to verify and ensure that all of the AFDC requirements are met for children prior to the state claiming title IV-E foster care maintenance payments.

**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(a) of the Act.

**Recommended Corrective Action:** The state should immediately develop a corrected policy for all of the counties and tribes notifying them that children that were part of the Minnesota Permanency Demonstration Project are not categorically eligible for title IV-E payments should a child re-enter foster care. Further, the state needs to inform staff that these children will only be eligible for title IV-E funds should they meet all of the title IV-E requirements for each foster care episode. Additionally, the state should determine if there are other cases that were part of the Minnesota Permanency Demonstration Project for which they are claiming title IV-E funds based on this policy error and, if so, back out all ineligible title IV-E payments. It is noted that the state’s waiver authority for the Minnesota Permanency Demonstration Project ended on September 30, 2010. Finally, the state should explore how the county was able to override the state’s eligibility system in the second case. The state should ensure that the loophole that allowed this override is closed and that proper training and oversight of the eligibility determination process continues.
Issue #3: Safety Requirements. There were three cases where the foster parents were issued licenses and the children were placed in the home prior to the tribal agency obtaining the required fingerprint-based safety checks from the National Crime Information Databases (NCID). In all three cases, title IV-E foster care maintenance and administration payments were made for periods prior to the PUR during the time the children were in placements and did not meet all of the required title IV-E criteria.

Title IV-E Requirement: Section 471(a)(20)(A) of the Act and 45 CFR 1356.30 place requirements on the state as a condition of the title IV-E state plan and places additional requirements for claiming title IV-E foster care maintenance payments on behalf of a child. As a condition of the title IV-E state plan, the state title IV-E agency must have procedures for criminal background checks for prospective foster and adoptive parents. The criminal record checks for foster parents newly licensed on or after October 1, 2008 must include fingerprint-based background checks of the NCID. The state title IV-E agency and its agents must conduct the checks and otherwise apply the procedures for prospective parents whom it will license or approve to care for a participant in the state’s title IV-B/IV-E program (§471(a)(20)(A) of the Act). Agents of the title IV-E agency include a state licensing authority and any other agency that is under contract with the title IV-E agency to issue licenses or approvals.

Further, in order for a state to claim title IV-E foster care maintenance payments for an otherwise title IV-E eligible child, the criminal records check must reveal that the foster parent has not been convicted of the prohibited felonies and the home must be fully licensed or approved (§§471(a)(20)(A)(i) and (ii) of the Act). This applies regardless of the entity that licenses or approves the foster parent (e.g., a private adoption agency, an Indian tribe either with or without an agreement under §472(a)(2)(B)(ii) of the Act, or a private child placing agency not under contract with the state agency). The state agency must provide documentation through the IV-E review to verify the requirements are met satisfactorily for the period the foster care maintenance payment is claimed on behalf of the child in the foster care placement during the PUR.

Recommended Corrective Action: It is recommended that the state provide training and technical assistance to state, county and tribal staff on §471(a)(20)(A) of the Act and 45 CFR §1356.30 as they relate to fingerprint-based criminal record checks of the NCID for foster and adoptive parents and title IV-E eligibility. Further, the state should put in place measures to ensure that all state, county and tribal partners are not issuing licenses prior to conducting and receiving the results of a NCID background check on foster parents. Conducting safety checks is a critical safety measure to help ensure a child is not in a foster care placement where the caregiver has caused or is likely to cause harm to a child.
Additional Opportunities to Improve

During the IV-E review it was noted that the state is not determining and tracking whether counties and tribes are appropriately submitting claims for all expenditures eligible for title IV-E reimbursement. Currently, the state receives title IV-E claims from counties and tribes and does not have the ability to readily access complete payment histories that include the county and tribal portion of foster care costs. This issue hampers the state’s ability to monitor whether counties and tribes are appropriately submitting claims for all expenditures eligible for title IV-E reimbursement. While only one case was determined to be an underpayment, there were numerous payment histories with gaps in title IV-E funding that required the state fiscal staff to access numerous computer systems to ensure that these gaps were not, in fact, reflective of underpayments. Also, it was noted that the use of title IV-E funds for claimable items such as initial clothing vouchers, child care costs, and allowable transportation costs were not frequently claimed. The Children’s Bureau recommends that the state develop a financial system that can track and monitor all foster care payments and not just title IV-E claims. This system change will allow the state proper oversight to ensure that underpayments are not occurring and the state is maximizing reimbursements for allowable costs of care for eligible children under title IV-E.

Program Strengths and Promising Practices

Minnesota’s continued commitment and willingness to improve its program and practice is evidenced by the following positive practices and processes of the title IV-E foster care eligibility program. These approaches seem to have led to improved program performance and successful program operations.

Court Orders and Judicial Findings: During the on-site review, it was noted that the strong involvement and commitment of the Court Improvement Program (The Minnesota Children’s Justice Initiative) along with the collaborative training efforts between DHS and Tribal and County Courts contributed to strong and efficient judicial processes. These efforts and collaboration seemed to have reduced the possibility of ineligible title IV-E foster care maintenance payments. The following promising judicial practices were evidenced in the case records:

- In the majority of cases reviewed, court orders were clear, comprehensive and contained individualized and case-specific judicial determinations;
- Timely judicial findings of Contrary to the Welfare and Reasonable Efforts to Prevent Removal were well-documented. Reasonable Efforts to Prevent Removal findings were oftentimes found in the first court orders;
- Placement and Care language in court orders was clear and well-documented;
- Best Interest findings for Voluntary Placement Agreement cases were occurring within 180 days of the agreement being signed;
- Emergency court proceedings for placement were being conducted within 72 hours in accordance with state policy and court orders often included adjudication findings; and
- The use of Scheduling Orders throughout the state that were signed by a judge and contained benchmark dates for court hearings aimed at moving cases towards permanency.
AFDC Eligibility Determinations: Minnesota uses its Social Services Information System (SSIS) and its statewide automated MAXIS through an automated interface to determine and document title IV-E foster care eligibility, including the AFDC relatedness components. Relevant placement information and court determinations are entered and maintained in SSIS where final eligibility determinations are completed within the MAXIS system. The DHS provides ongoing training and technical assistance to counties and tribes on AFDC eligibility policy statewide and as it relates to title IV-E eligibility. The following program practices were noted during the on-site review and seemed to have contributed to the state’s compliance in 78 sample cases:

- AFDC worksheets demonstrating the path to eligibility were complete and easy to read;
- The month court proceedings were initiated or voluntary placement agreement was signed for the child’s removal, which is required to determine AFDC eligibility, was correctly and clearly identified;
- Deprivation and dependency were well-documented in the files; and
- Documentation supporting financial need of the family unit was detailed and complete.

Licensing: The DHS Licensing Division delegates the licensing process for family foster homes to county social service agencies and private agencies to license foster family homes. Upon the recommendations of the county or private agency the DHS Licensing Division then issues the family foster care licenses. The DHS Licensing Division oversees these licensing entities by conducting regular reviews of the licensing agencies’ practices to ensure the reliability of the licensing processes and also provides training and technical assistance, when required. The DHS Licensing Division is directly responsible for the licensing of most child caring institutions in Minnesota, however, through an interagency agreement and collaboration the state’s Department of Corrections also licenses a small number of child caring residential facilities. The DHS Licensing Division and the Department of Corrections work collaboratively to implement and administer the state’s licensing standards. During the current on-site review of licensing records for both foster family homes and child caring institutions the following were noted:

- Licenses clearly documented the foster parents’ names and dates of licensure;
- When licenses needed to be extended, the appropriate documentation was provided to support the extension and timely issuance of the license; and
- Child caring institution licenses were clear as to the facility name, capacity, age of the residents and type of residential setting for each facility was (i.e. group home, secure correctional facility or shelter).

Safety Requirements for Child Caring Institutions: Minnesota has some promising practices regarding safety checks on individuals working in child caring institutions. Minnesota has a law (§245.05) where the Departments of Corrections and Probation are required to notify DHS Licensing of an individual’s conviction for a potentially disqualifying offense if the individual has been affiliated with a program licensed by the Department of Human Services, Minnesota Department of Health and/ or Minnesota Department of Corrections. In addition to the above mentioned collaborative effort, DHS has a statewide automated system where it receives daily
reports of individuals with findings of maltreatment of minors and vulnerable adults. The DHS Licensing Division on a daily basis runs the names of those individuals against all previous background studies submitted. The results of this process allows the state to notify agencies and/or facilities if they have identified an individual that has a finding of maltreatment of a minor or vulnerable adult so the appropriate action can be taken. Furthermore, a statewide database of individuals disqualified from working with children has been developed. These processes seem to have led to enhanced and improved program performance and successful program operations as there were no ineligible title IV-E payments attributed to safety checks for caregiving staff of child caring institutions. During the on-site review of safety check records for child caring institutions the following was noted:

- The initial background studies on individuals working in child caring institutions were being conducted timely and as required by Minnesota law; and
- Evidence of the automated daily checks of individuals working in the child caring institutions against the findings of child abuse and vulnerable adults statewide registry were found in the licensing files provided for each of the institutions reviewed.

Disallowances

A disallowance in the amount of $31,614.00 in maintenance payments and $10,555.00 in related administrative costs of FFP is assessed for title IV-E foster care payments claimed for error cases. Additional amounts of $8,994.00 in maintenance payments and $9,775.00 in related administrative costs of FFP are disallowed for title IV-E foster care payments claimed improperly for non-error cases. The total disallowance as a result of this IV-E review is $60,938.00 in FFP. Minnesota 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 that all eligibility requirements have been met.

Next Steps

Since Minnesota was found to be in substantial compliance, no formal corrective action plan is required in follow-up to this review. We commend the state for its ongoing efforts in examining program deficiencies and implementing measures that have resulted in improvements to its title IV-E program. As part of the state’s continued efforts to improve its title IV-E foster care eligibility program, Children’s Bureau recommends that DHS examine identified program deficiencies and develop measurable, sustainable strategies that target the root cause of any areas that may be preventing the state from operating an accurate foster care eligibility program. The Children’s Bureau Region 5 Office staff is available to assist the state in identifying corrective action and obtaining support available through our national network of training and technical assistance centers to help the state address issues and concerns raised during this IV-E review.