

**State of Missouri Children’s Division Primary Review  
Title IV-E Foster Care Eligibility Report of Findings for  
October 1, 2010 – March 31, 2011**

**Introduction**

During the week of July 11, 2011, the Children’s Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of Missouri’s title IV-E foster care program. The review was conducted in collaboration with the State of Missouri Children’s Division and was completed by a review team comprised of representatives from the State agency, State Court Improvement Project, CB Central and Regional Offices, and ACF Regional Grants Management.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether the title IV-E foster care program of the Missouri Children’s Division 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 the State’s 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, 2010 through March 31, 2011. 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 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, Missouri 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 the 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 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 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 service date of an unallowable activity and 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 2-year filing period specified in 45 CFR §95.7, unless the title IV-E agency elected not to claim the payment or the filing period had expired. CB and the State agreed that the State would have two weeks following the onsite review to submit additional documentation for a case that during the onsite review was identified as being in error, in undetermined status, or not in error but with ineligible payments. Based on the supplemental documentation, the improper payment findings for sample cases #5 and #14 were changed to non-error cases.

### **Compliance Finding**

The review team determined that 77 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Three (3) cases were determined to be in error for either part or all of the PUR and three (3) non-error cases were found to be 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 cases with ineligible payments, are being disallowed. In addition, four (4) non-error cases were identified to have periods of eligibility for which Missouri did not claim allowable title IV-E maintenance payments. Because the number of cases in error is fewer than four (4), the Missouri Children's Division is in substantial compliance for the PUR.

### **Case Summary**

The following charts record the error cases; non-error cases with ineligible payments; underpayments; reasons for the improper payments; improper payment amounts; and Federal provisions for which the Missouri did not meet the compliance mandates.

**Error Cases**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments (FFP)</b>
#61	Foster care maintenance payment was made for the period while the child was placed in an unlicensed foster family home. [§472(a)(2)(c) & 472(c) of the Act; 45 CFR §1356.71(d)(1)(iv)] Ineligible: 02/01/2011-02/18/2011	\$188.91 Maint. \$0 Admin.
#63	Foster care maintenance payment was made for the period while the child was placed in an unlicensed foster family home. [§472(a)(2)(c) & 472(c) of the Act; 45 CFR §1356.71(d)(1)(iv)] Ineligible: 12/01/2010-06/30/2011	\$1,507.12 Maint. \$0 Admin.
OS#6	Foster care maintenance payment was made for the period while the child was placed in an unlicensed foster family home. [§472(a)(2)(c) & 472(c) of the Act; 45 CFR §1356.71(d)(1)(iv)] Ineligible: 07/04/2010-11/30/2010	\$453.57 Maint. \$0 Admin.

Total: \$2,149.60

**Non-Error Cases with Ineligible Payments**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments (FFP)</b>
#20	Foster care maintenance payment was made for the period while the child was placed in an unlicensed foster family home [§472(a)(2)(c) & 472(c) of the Act; 45 CFR §1356.71(d)(1)(iv)] Ineligible: 06/01/2010-07/15/2010	\$85.70 Maint. \$0 Admin.
#48	Foster care maintenance payment was made for the period while the child was placed in an unlicensed foster family home [§472(a)(2)(c) & 472(c) of the Act; 45 CFR §1356.71(d)(1)(iv)] Ineligible: 07/01/2009-09/30/2009	\$534.59 Maint. \$0 Admin.
#59	More than one foster care maintenance payment was made to the same provider for the same time period and activity [§475(4) of the Act; 45 CFR §1356.60(a)(i)] Ineligible: 02/01/2011-02/28/2011	\$563.35 Maint. \$0 Admin.

Total: \$1,183.63

**Underpayment Cases**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments (FFP)</b>
#12	Foster care maintenance payment for an otherwise eligible child began five months following the month the child was moved from an ineligible facility into an eligible foster home. [§472 of the Act; 45 CFR § 1356.21; ACYF-CB-PIQ-91-05] Eligible: 09/22/2010 – 02/01/2011	\$973.66
#25	Foster care maintenance payment for otherwise eligible child began the month following the month in which the license was issued to the foster home; all eligibility requirements were met in the prior month. [§472 of the Act; 45 CFR §1356.21; ACYF-CB-PIQ-91-05] Eligible: 03/01/2010-03/31/2010	\$301.15
#31	Foster care maintenance payment for otherwise eligible child began the month following the month in which the license was issued to the foster home; all eligibility requirements were met in the prior month. [§472 of the Act; 45 CFR §1356.21; ACYF-CB-PIQ-91-05] Eligible: 03/01/2011-03/31/2011	\$190.94
#58	Foster care maintenance payment for otherwise eligible child began the month following the month in which the license was issued to the foster home; all eligibility requirements were met in the prior month. [§472 of the Act; 45 CFR §1356.21; ACYF-CB-PIQ-91-05] Eligible: 01/01/2011-01/31/2011	\$190.94

Total: \$1,656.69

**Areas in Need of Improvement**

The findings of this review indicate that Missouri 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 Missouri should undertake.

**Issue # 1: Licensing.** The review found 5 cases where title IV-E payments were made when a child was placed in an unlicensed foster home. Three were determined as error cases and two other cases were determined to be non-error cases with ineligible payments outside of the PUR because title IV-E payments were made on behalf of a child for a period prior to the child’s foster parent meeting all of the agency’s standards for issuance of a license.

**Title IV-E Requirement:** Section 472(c)(1) of the Act defines foster family home as “a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as

meeting the standards established for such licensing.” In order to receive title IV-E foster care maintenance payments, an eligible child must be placed in a title IV-E reimbursable foster care home or facility and that home or facility must meet the standards for full licensure established by the State.

**Recommended Corrective Action:** While Missouri has improved in this area, there is still room for changes that will ensure compliance with Federal regulations. Missouri's automated system (FACES) should be reviewed to ensure that there are adequate edits in place to prevent title IV-E from being claimed when a child is placed with an unlicensed provider. Eligibility and licensing staff should work together to ensure that current licensing information is shared and establish a system of reviewing compliance with this requirement periodically. Missouri also should review its licensing and record-keeping practices to ensure that sufficient oversight of licensed homes and licensing decisions are documented.

**Issue # 2:** *Judicial Determinations Regarding Reasonable Efforts to Finalize a Permanency Plan.* Based on the supplemental documentation of compliance with the judicial requirement for the PUR, the improper payment findings for sample cases #5 and #14 were changed to non-error cases. In one of the cases, sample case #5, the court transcript furnished from the May 25, 2010 court proceeding documented the court’s determination that the agency was making reasonable efforts to finalize the permanency plan. However, the written court orders from that hearing and other hearings relied on the court’s finding on whether or not there was an “active written service agreement.” This language, in part, was accepted as a reasonable efforts finding for the sibling case during Missouri’s 2008 eligibility review. Since then, we have told States, as the issue has arisen, that a statement in a court order that denotes the case plan and the permanency plan goal, as a standalone, is not sufficient to document that the court has made an explicit judicial determination that the title IV-E agency has made reasonable efforts to finalize the permanency plan for the child. This guidance is consistent with the Federal Departmental Appeals Board (DAB) decision 2048.

DAB decision 2048 generally held that although specific terminology is not required, the use of the term “explicit” in the regulations at 45 CFR §1356.21(d) means that it is not sufficient if the court order merely implies the requisite judicial findings were made. Instead, there must be an expressed statement on the face of the written court order which can be clearly understood as a determination that the required type of judicial finding has been made. The Missouri court orders that rely on the finding regarding the written service agreement lack such an expressed statement. These court orders do not clearly reflect that the court made a determination about whether the “active written agreements” constituted the court’s finding about the “reasonableness” of the agency’s steps toward accomplishing the permanency plan. The language in question does not help to establish the court’s intent to make a finding about the agency’s efforts to finalize the plan for the child.

**Title IV-E Requirement:** For a child who is judicially-removed from the home, 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. The court may rule on the plan in effect at the time of the finding, a plan that has been in effect for a brief period of time, or the activities related to achieving

permanency that took place over the prior 12 months leading to the finding. 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. The judicial determinations regarding reasonable efforts to finalize the permanency plan in effect must be explicitly documented and must be made on a case-by-case basis and so stated in the court order or transcript of the court proceeding.

**Recommended Corrective Action:** As noted above, court orders that rely solely on language about whether there is an “active written service agreement” is not sufficient to document the court has made an explicit judicial determination that the title IV-E agency has made reasonable efforts to finalize the permanency plan for the child. Language of this sort may not be sufficient for such a finding in future eligibility reviews because of the guidance rendered in DAB decision 2048. The Missouri Children’s Division is urged to continue to work with the Missouri Court Improvement Project and the Judiciary to develop and implement procedures to ensure that the court makes definitive and timely findings of whether the State has made reasonable efforts to finalize the permanency plan. The judicial finding must be explicitly expressed in the court order or transcript of the court proceeding.

**Issue #3: *Underpayments.*** There were a total of four cases (case samples #12, #25, #31 and #58) in which the State could have claimed title IV-E payment, but did not. For all of these cases, reviewers determined that all requirements were documented, but the State did not claim for all of the days that could have been claimed. Missouri began claiming the month (or months) after a provider’s license was issued though the child was eligible for the entire month in which the license was issued. We have assessed the total amount of FFP maintenance that could have been claimed for these cases as approximately \$1,656.69.

**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:** Missouri should identify the systemic factors underlying the occurrence of improper payments and develop an action plan to correct them. This process would help determine whether adequate financial controls and edits are in place and properly functioning to prevent payments for ineligible children or unallowable program costs. Also, it would help to reduce or eliminate future underpayments and increase the State’s ability to maximize reimbursements for allowable costs of care for eligible children by using funding available under title IV-E.

## **Strengths and Promising Practices**

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

Automated Eligibility Determinations: Missouri has improved its process for determining title IV-E eligibility through the development and implementation of an automated data system which facilitates timely eligibility decisions and tracks eligibility throughout the foster care episode. Missouri's SACWIS system (FACES) utilizes data captured and entered into the system for title IV-E eligibility determinations and to document the case data used to calculate a child's eligibility so that it is available for independent review and audit.

## **Disallowances**

A disallowance in the amount of \$2,149.60 in maintenance payments and \$0 in related administrative costs of FFP is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of \$1,183.63 in maintenance payments are disallowed for title IV-E foster care payments claimed improperly for the non-error cases. The total disallowance is \$3,333.23 in FFP. Missouri 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**

As part of Missouri's ongoing efforts to improve its title IV-E foster care eligibility determination process, the CB recommends Missouri examine identified program deficiencies and develop measurable, sustainable strategies that target the root cause of problems hindering the State from operating an accurate foster care eligibility program. Appropriate corrective action should be taken in instances of noncompliance with Federal laws and regulations.