

Final Report
State of Montana
Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for
April 1, 2014 – September 30, 2014

Introduction

During the week of June 8, 2015, the Children’s Bureau (CB) of the Administration for Children and Families conducted a primary review of the state’s title IV-E foster care program. The title IV-E foster care review (IV-E review) was conducted in collaboration with the state of Montana and was completed by a review team comprised of representatives from the state title IV-E agency, tribal organizations, CB Central and Regional Offices, and ACF Regional Grants Management.

The purposes of the IV-E review were (1) to determine whether the state of Montana title IV-E foster care program is 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 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 01, 2014 to September 30, 2014. A computerized statistical sample of 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. All cases reviewed were from the original sample of 80 cases.

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 the 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 a child failed to meet AFDC criteria. A second sample case was assigned an error rating when the agency failed to verify fingerprints for a foster family. In addition, underpayments were identified for two sample cases 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.

Compliance Finding

The review team determined 78 of the 80 cases met all eligibility requirements (i.e., were deemed non-error cases) for the PUR. Two cases were determined as in error for not meeting the eligibility requirements either for periods only during the PUR or for the entire foster care episode.

The Children’s Bureau has determined the state of Montana’s 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. 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 two error cases, two non-error cases had periods 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 and underpayment cases; reasons for the improper payments; improper payment amounts; and federal provisions for which the state did not meet the 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 year(s) for each sample case.

Error Cases:

| Sample Number | Improper Payment Reason & Ineligibility Period April 1, 2014 – September 30, 2014 | Improper Payments (FFP) |
|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|
| #04 | The child must be eligible for AFDC in the removal home for the month a voluntary placement agreement is signed or court proceedings are initiated leading to a judicial removal. AFDC eligibility was not met in this case because gross income exceeded the state’s AFDC limits. [§472(a)(3)(A) of the Act]. Ineligible: Entire FC episode; Reported Disallowance Period: 9/28/14 -10/02/14 | \$574.00 Maint. \$0 Admin. |

| Sample Number | Improper Payment Reason & Ineligibility Period April 1, 2014 – September 30, 2014 | Improper Payments (FFP) |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|
| #11 | The child's foster family home did not meet the fingerprint check requirements under §471(a)(20) of the Act as applicable [45 CFR §1356.30, and ACYF-CB-PI-10-02]. Ineligible: 02/01/2014 – 04/08/2015 | \$4,386 Maint. \$7,659 Admin. |

Total: \$12,619

Underpayment Cases:

| Sample Number | Improper Payment Reason & Eligible Period April 1, 2014 – September 30, 2014 | Improper Payments (FFP) |
|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| | The state could not determine the reason title IV-E maintenance payments were not claimed for the following cases. Underpayments may have been caused by coding errors. The state may claim for these cases once they verify that all eligibility criteria are met. Reimbursement for these cases may be requested only for claims that are within the two-year time limitation as described in 45 CFR 95.7. | |
| #49 | A period of 22 days was not claimed although title IV-E payments had been made prior to those 22 days. Eligible: 7/01/-7/22/2014 | \$1,194 Maint. |
| #69 | No IV-E claims were made for the underpayment timeframe Eligible: 04/04/2014 – 9/16/2014 | \$8,843 Maint. |

Total: \$10,037

Areas Needing Improvement

Issue #1: AFDC Eligibility. Sample case #4 was determined an error case because the state was not able to establish AFDC eligibility for the home from which the child was judicially removed. The state's eligibility team determined the child did not meet the AFDC eligibility requirements related to financial need based on the state's 1996 AFDC limits. However, the state inadvertently claimed title IV-E maintenance payments for a short portion of the child's foster care placement. The child did not meet the AFDC eligibility requirements; therefore, the child's entire foster care episode is not eligible for title IV-E funding.

Title IV-E Requirement: In order for a child to be eligible for title IV-E, per federal provisions at 45 CFR 1356.21(l)(2), and §472(a)(1)(b) and §472(a)(3)(A)(ii)(II) of the Act, a child must be determined eligible for AFDC in the home from which there is a valid removal of the child. The AFDC eligibility must be based on that home for the month a voluntary placement agreement is signed or court proceedings are initiated leading to a judicial removal. In the removal home and for the removal month, the child must have been financially needy and deprived of parental support or care as determined based on the state's title IV-A plan in effect on July 16, 1996.

Recommended Corrective Action: The state should put in place a quality assurance system or an automated edit check in its financial process to ensure title IV-E maintenance payments are not accidentally or mistakenly claimed.

Issue #2: Safety Requirements. In sample case 11 the state was not able to provide verification that a fingerprint-based check was conducted on the foster family with whom the child was living during the PUR.

Title IV-E Requirement: Federal requirements under §471(a)(20) of the Act mandate the title IV-E agency to document a criminal records check on foster family homes. The state is required to complete a criminal record check on the foster parent prior to licensing the foster family home and it must confirm that the foster parent had not been convicted of any of the felonies listed in §§471(a)(20)(A)(i) and (ii) of the Act. For a foster parent who is newly licensed on or after the state's effective date for implementing the fingerprint-based check requirement, the title IV-E agency must conduct a criminal records check that includes a fingerprint-based check of the National Crime Information Databases. The state agency, in order to claim title IV-E foster care maintenance payments, must verify the foster family home meets the established safety standards before a child is placed in the home and before title IV-E foster care maintenance payments are claimed for the child.

Recommended Corrective Action: The state should put in place a quality assurance system and automated edit checks in its financial claiming process to ensure §471(a)(20) of the Act and 45 CFR 1356.30(f) are met for a child's foster care placement and documentation of compliance sufficiently supports the state's claims for title IV-E foster care maintenance payment on behalf of the child in the placement.

Other Program Concerns

One of the key considerations in establishing title IV-E eligibility is ensuring that a removal pursuant to a court order must be the result of judicial determinations of "contrary to the welfare" and "reasonable efforts" as specified in federal provisions at §472(a)(2)(A) of the Act and 45 CFR §§1356.21. All of the cases in the review sample were determined to have sufficiently satisfied the eligibility requirements in accordance with federal statutory and regulatory requirements. The state electronically tracks court hearings through a process that scans paper copies of court documents into an electronic version and the system tracks subsequent court dates based on the scanned history. Court orders, affidavits and court petitions pertaining to the removal and placement in foster care of children through tribal courts were found to be of very high quality. The judicial determinations in tribal court orders were child-specific, detailed and clearly articulated.

However, there were general concerns about the quality of the court orders for children under state jurisdiction. Reviewers found in many of the state's cases court orders that did not address the child-specific facts of the case, the circumstances that were responsible for the child being in care, or the agency's efforts to achieve the child's permanency plan. For example, several of the court orders referencing sibling groups did not individualize the specific circumstances of each child. Also, judicial findings across court jurisdictions used the same, standard language to document judicial determinations even though circumstances surrounding removal and/or permanency decisions were different. For example, many court orders indicated reasonable

efforts were not made due to emergency situations. However, preventative steps the agency had taken prior to the removal decision and court involvement were clearly delineated in the agency's affidavit and removal petition to the court.

Consistent with federal provisions at §472(a)(2)(A) of the Act and 45 CFR §§1356.21, judicial determinations must be made on a case-by-case basis; explicitly stated in the court order; and in conformity with regulatory timeframes. The court orders must definitively articulate the judge's child-specific ruling pertaining to the "contrary to the welfare" and "reasonable efforts" determinations. Courts may demonstrate, in numerous ways that the judicial determination is child-specific and has been made on a case-by-case basis, including referencing in the court order "the facts of a court report, related psycho-social report, or sustained petition." [See Preamble to the Final Rule, 65 FR 4020, 4056 (January 25, 2000)]. Such documentation establishes that the judge reviewed the particular facts and circumstances of the specific child. Although not required for title IV-E eligibility purposes, including in the court order the facts upon which the "contrary to the welfare" and "reasonable efforts" determinations are based significantly improves the quality of the court order.

The Montana Department of Public Health and Human Services (DPHHS) should continue to collaborate with the state Court Improvement Program to improve the quality of the court orders and to make court personnel aware of the importance of court orders that are child-specific and explicitly detailed. The state should ensure court orders provide clarity about the child's removal circumstances and the specific efforts of the agency to make and finalize a permanency plan for the child.

Program Strengths and Promising Practices

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

Automated Data System Interfaces: Montana has improved its process for determining title IV-E eligibility through the development and implementation of an automated data system called CHIMES (Combined Health Care Information and Montana Eligibility System) which facilitates timely eligibility decisions and tracks eligibility throughout the foster care episode. The system is able to electronically communicate with other state agencies such as the Montana Department of Social Security to obtain information pertinent in determining financial need and deprivation for AFDC eligibility. In addition, the system electronically sends requests for and receives transmissions of criminal record checks from state and federal law enforcement agencies. The eligibility unit workers use information from the CHIMES screens and paper documentation to make the title IV-E eligibility determinations. Then workers record their decision within CHIMES. This provides a safeguard for ensuring accurate eligibility determinations and allows factors of eligibility data to be available to other child welfare professionals during the life of the case. It also helps ensure all eligibility factors are consistently and accurately applied in every eligibility determination. Automation of the application of eligibility rules and arithmetic calculations has eliminated much of the potential for error.

Eligibility Determinations: Montana has centralized determination of title IV-E eligibility in a specialized unit. These determinations are made in conjunction with state and tribal case

workers in field offices. Documentation supporting determinations was readily available for the IV-E review. The state agency centralized eligibility unit was put in place to manage the eligibility determination process by overseeing tracking and monitoring of title IV-E eligibility determinations and recording eligibility decisions in CHIMES. Centralization of the eligibility determination function has promoted regular training on title IV-E eligibility requirements and developed a tracking system for eligibility events used by the unit. It seems the work of the centralized eligibility unit has been a key component in enhancing the development and availability of documentation supporting title IV-E eligibility. The Children's Bureau also understands that staff in the unit work with field offices, tribes, courts, state licensing agency and state fiscal officials to help assure required actions and supporting paperwork is completed timely.

Licensing

A separate unit within the Quality Assurance Division licenses and monitors all child placement agency group and residential facility providers, while DPHHS and tribes license all foster family homes. The eligibility unit approves all tribal licensing packets prior to final licensure. In the review, the safety documentation process was easy to follow and all licensing records were complete and up-to-date.

Disallowances

A disallowance in the amount of \$4,960 in maintenance payments and \$7,659 in related administrative costs of FFP is assessed for title IV-E foster care payments claimed for error cases. The total disallowance as a result of this IV-E review is \$12,619 in FFP.

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

Next Steps

As part of the state's ongoing efforts to improve its title IV-E foster care eligibility determination process, the Children's Bureau recommends the state of Montana examine identified program deficiencies and develop measurable, sustainable strategies that can improve an already quality program. The Children's Bureau Region 8 office staff is available to assist the state in identifying any support needed.