

Final Report
North Dakota Children and Family Services
Primary Review
Title IV-E Foster Care Eligibility

Report of Findings for
October 1, 2013 – March 31, 2014

Introduction

During the week of August 11, 2014, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of the state's title IV-E foster care program. The title IV-E review (1V-E review) was conducted in collaboration with North Dakota and was completed by a review team comprised of representatives from state and county title IV-E agency staff, cross-jurisdiction reviewers from the Rosebud Sioux Tribe of South Dakota, Standing Rock Tribe of North Dakota and Ute Tribe of Utah, CB Central and Regional Offices and Regional ACF Office of Grants Management staff. State Court Improvement program staff participated in the entrance and exit meetings.

The purposes of the IV-E review were (1) to determine whether the North Dakota Children and Family Services' 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 that 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 October 1, 2013 -March 31, 2014: A computerized statistical sample of eighty (80) cases plus twenty (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 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 for claiming.

A sample case is 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 is 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 are identified for a sample case when the state unintentionally does 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 has not expired.

The Children's Bureau and North Dakota agreed the state would have 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. Supplemental documentation was provided by the state for the following (28) sample cases: 04, 05, 07, 14, 15, 21, 32, 33, 38, 39, 40, 41, 42, 43, 48, 51, 53, 54, 55, 57, 59, 62, 67, 69, 70, 73, 74, & 75.

Following reviews by regional office staff, initial improper payment findings for these cases were dropped and they were found to be properly claimed, non-error cases.

Compliance Finding

The review team determined that 77 of the 80 cases met all eligibility requirements (i.e., were deemed non-error cases) for the PUR. Three (3) 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. There were no cases with underpayments or non-error cases with ineligible payments in the sample cases reviewed.

The Children's Bureau has determined the North Dakota 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.

Case Summary

The following chart records the error cases; reasons for the improper payments; improper payment amounts; and federal provisions for which the state did not meet the compliance mandates.

Error Cases

Sample Number	Improper Payment Reason & Ineligibility Period October 1, 2013 - March 31, 2014	Improper Payments Federal Financial Participation (FFP)
#9	<p>Valid removal did not occur for title IV-E. The child remained in the home of the relative who was the subject of the “contrary to the welfare” determination in the removal order. Within the PUR, the state made title IV-E payments for the child’s stay with the relative, a licensed foster parent, after the judge’s order to remove the child from the home. The delayed physical removal was not authorized in the judicial removal order. All ineligible payments must be removed from North Dakota’s financial claiming system.</p> <p><u>Eligibility Requirements:</u> A removal is not valid for title IV-E purposes when legal custody (i.e. placement and care responsibility) has been removed from the parent or another specified relative and the child remains in the removal home under the responsibility of the same parent or relative. [§45 CFR §1356.21(k)(2)]</p> <p>Ineligible: Entire FC episode Reported Disallowance Period: 5/4/2012 – 7/31/2014</p>	<p>\$38,945 Maintenance</p> <p>\$17,527 Admin.</p>
#27	<p>AFDC financial eligibility not established for title IV-E. Income available to the family exceeded the state’s income standard. The state discovered the error during its internal monitoring prior to the review but was not able to reverse the claim prior to receiving the IV-E review sample.</p> <p><u>Eligibility Requirement:</u> Child’s financial need must be established based on the income and resources available to the child and other members included in the AFDC assistance unit. The determination of AFDC financial eligibility is according to the state’s Title IV-A plan in effect on July 16, 1996 [§45 CFR §1356.21(l)(2), and §472(a)(1)(b) and §472(a)(3)(A)(ii)(II) of the Act]</p> <p>Ineligible: Entire FC episode Reported Disallowance Period: 1/20/2014- 5/31/2014</p>	<p>\$1,975 Maintenance</p> <p>\$3,432 Administrative Claim</p>

Sample Number	Improper Payment Reason & Ineligibility Period October 1, 2013 - March 31, 2014	Improper Payments Federal Financial Participation (FFP)
#49	<p>Judicial determination of reasonable efforts to finalize permanency plan not met for PUR. The judicial determination was due by January 2014 and was made in March 2014.</p> <p><u>Eligibility Requirement:</u> Judicial determination of whether the state made reasonable efforts to finalize a child's permanency plan must occur at regular 12-month intervals for the duration of the foster care episode and no later than 12 months from when the prior determination is obtained. If the judicial determination is not timely, the child is ineligible at the end of the month it is due until the first day of the month is made. [§472(a)(2)(A)(ii) of the Act; 45 CFR §1356.21(b)(2)]</p> <p>Ineligible: 02/01-28/2014</p>	<p>\$527 Maintenance.</p> <p>\$858 Administrative Claim</p>

41,447 Maintenance

21,817 Admin.

Total: 63,264

Areas Needing Improvement

Judicial Determinations for Removals

During the onsite review, the review team identified 28 cases, as noted above, in which the initial "Temporary Custody Orders" for removal and placement into the care, custody and control of County Social Services were signed by Juvenile Court Services Supervisors or Juvenile Court Officers. According to the ND Unified Judicial System Classification/Job Classifications, these individuals are employees of the Division of Juvenile Services within the Department of Corrections. State staff said these individuals were designated by the State Supreme Court to authorize emergency removal and temporary custody (placement and care responsibility) of children and youth, and enter initial determinations of "contrary to the welfare" and "reasonable efforts to prevent removal", until a subsequent court hearing could be held within 96 hours from the time of removal. The subsequent court hearings are to be presided over by a District Judge or Judicial Referee. The state accepted the orders issued by Juvenile Court Services Supervisors or Juvenile Court Officers as the initial court order authorizing the removal of children for foster care placement and as providing necessary judicial determinations for title IV-E eligibility. The CB team leaders questioned whether these types of orders comport with title IV-E requirements for supporting program eligibility. The 28 cases were left pending a compliance finding following the on-site review while the Children's Bureau could review the state's statutes and policy and conduct additional research into federal mandates.

Title IV-E Requirement: For a child who is judicially removed and placed in foster care on or after March 27, 2000, federal provisions at §472(a)(2)(A)(ii) of the Act and 45 CFR

1356.21(b)(1) require a judicial determination to the effect that continuation in the home is contrary to the welfare, or that placement is in the best interest, of the child. The judicial determination must in the first court order sanctioning (even temporarily) the removal of a child from home. Federal provisions at §472(a)(2)(A)(ii) of the Act and 45 CFR 1356.21(c) also require for these removals that, prior to the placement of the child in foster care, a judicial determination that reasonable efforts are made, or are not required to be made, to prevent or eliminate the need for removal. Judicial findings must be made on a case by case basis and explicitly stated in a valid court order. If the judicial requirements are not met as required in federal mandates, the child is ineligible for the entire foster care episode.

Recommendations: The state conferred with its legal and judicial authorities and concluded that while judicial court supervisors and officers are authorized to approve removals through a “Temporary Custody Order”, they do not act in a judicial capacity. According to the state's October 16, 2014 correspondence, these individuals are not authorized to issue court orders or judicial decisions. The state further explained that, in matters regarding a child's removal, the initial court hearing is addressed through the “Shelter Care Hearing” and is presided over by either a District Court Judge or the Judge's Referee.

In view of the additional clarification from the state and following legal consultation, the CB Region 8 office made a subsequent visit to the state in July, 2015 to determine whether judicial determinations in the pending 28 cases were properly documented and whether there had been any improper claiming of title IV-E funds from the time of the court personnel's issuance of a “Temporary Custody Order” and the occurrence of a “Shelter Care Hearing” by a judge or judicial referee. After the review of the 28 case records, the Children's Bureau determined that the judicial requirements regarding the removals were properly met and there were no improper payments claimed for these cases.

As a result of the issue raised during the review, the state issued a policy memorandum to its staff clarifying state policy and practice regarding the role of court personnel in the removal of children and their placement in state care. The state's memo made it clear the “Temporary Custody Order” is not an order of the court and does not meet the state's legal definition of a court order. The state should review its title IV-E caseload to ensure correct authorizations are used to document judicial removals for determining eligibility.

Program Strengths and Promising Practices

The following positive practices and processes of the state's title IV-E program were observed during the review.

Quality Assurance

The state has developed a quality assurance (QA) process to track and monitor program performance and to strengthen the proficiency of county staff responsible for eligibility determinations. Primary title IV-E program oversight and training is provided by a single title IV-E specialist in the state's central office who also manages the agency's information technology (IT) Help Desk.

The QA process relies on peer-to-peer reviews involving county eligibility workers who periodically review each other's cases throughout the year. The process includes a feedback loop to county social services offices to assure review findings are shared with appropriate staff. The state title IV-E specialist provides follow-up with county offices when eligibility issues are identified. Following this primary IV-E review, the state formalized its QA process for monitoring title IV-E eligibility in state policy and application.

Eligibility Determinations

North Dakota provides social services through a county-administered system and title IV-E eligibility determination for all children entering foster care is completed in a process by county staff across the state. Turnaround of eligibility determinations is timely and eligibility decisions are mostly accurate although there is not a centralized process for eligibility determination.

The state does not have a Statewide Automated Child Welfare Information System (SACWIS), so much of the eligibility process relies on manual processes. Future consideration of changes to existing information systems should include consideration to automate the IV-E eligibility determination process. Due to the geographic location of the state's four (4) Indian tribes, title IV-E eligibility for tribal children placed in foster care is determined by staff in multiple county offices for individual tribes, which has resulted in some inconsistent determination decisions. Tribal program directors have expressed support for changes in the eligibility process to address these inconsistencies. Consistency would be improved through centralization of the eligibility determination process.

Extensive training is provided by the IV-E Specialist in the state central office and includes involvement of county staff in the IV-E eligibility QA process as peer reviewers. Although there have been plans for regional trainings, implementation has been significantly limited by Help Desk responsibilities of the single staff responsible for IV-E program oversight. This dual responsibility also limits opportunities for specialized training of IV-E eligibility workers within the counties. Title IV-E training is included in the agency's statewide annual training conference.

Licensing

The review found agencies responsible for licensing foster homes and group care facilities, (DCFS, County Social Services, PATH and Tribes), have effective licensing processes in place to ensure the safety of children. All title IV-E foster care settings were fully licensed and all criminal background checks were recorded, prior to claiming title IV-E foster care maintenance payments. County social service agencies recruit, train and license family foster homes. The PATH, a licensed child placement agency, is similarly responsible for therapeutic foster homes. The Division of Children and Family Services licenses all residential child care facilities. Title IV-E agreements are in place with all four (4) tribes in the state: Spirit Lake Sioux Tribes; Turtle Mountain Band of Chippewa; Standing Rock Sioux; and Three Affiliated Tribes. The tribes recruit, train and issue affidavits of licensure to family foster homes that provide care on the reservation. The state's QA review of IV-E foster care cases also are conducted through the Foster Care Program and are inclusive of licensing and safety requirements for cases reviewed.

Disallowances

A disallowance in the amount of \$41,447 in maintenance payments and \$21,817 in related administrative costs of Federal Financial Participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases. The total disallowance as a result of this review is \$63,264 in FFP.

Next Steps

The Children's Bureau recommends the agency continue to strengthen its quality assurance practices to monitor the accuracy of eligibility determination and claiming processes as a way to further reduce and eliminate improper payment occurrences. The Children's Bureau Region 8 Office staff remain committed to assist North Dakota in its ongoing efforts to make continual improvements its title IV-E program and to facilitate any technical assistance needs the state may identify to make further improvements.