

**Nebraska Department of Health and Human Services
Children and Family Services Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for October 1, 2008 – March 31, 2009**

Introduction

During the week of August 17, 2009, 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 review was conducted in collaboration with the Nebraska Department of Health and Human Services (NDHHS), Children and Family Services and was completed by a review team comprised of representatives from NDHHS, the Nebraska Court Improvement Project, CB Central and Regional Offices, and ACF Regional Grants Management.

The purpose of the title IV-E foster care eligibility review were (1) to determine whether NDHHS's 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 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 six-month period under review (PUR) of October 1, 2008 through March 31, 2009. 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 78 cases from the original sample plus 2 oversample cases. Two (2) cases were excluded from the original sample because no title IV-E foster care maintenance payments were made during the PUR. The State provided documentation to support exclusion of these cases from the review sample and replacing them with cases from the oversample.

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 NDHHS 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 childcare 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 that 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 activity date in the PUR for which the 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 in error, in undetermined status, or not in error but with ineligible payments. The State submitted documentation of safety provisions for one institution in which a child was placed. The information was not available during the onsite review. Based on the supplemental documentation, the improper payment finding for sample case 53 was changed to a non-error case.

Compliance Finding

The review team determined that 78 of the 80 cases met eligibility requirements for the PUR. Two (2) cases were determined to be in error for part of the PUR and one (1) non-error case was 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. Because the number of cases in error is fewer than four (4), NDHHS is found to be in substantial compliance for the PUR.

Case Summary

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

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
#1	Judicial determination of reasonable efforts to finalize permanency plan not attained. [§472(a)(2)(A)(ii) of the Act; 45 CFR §1356.21(b)(2)] Ineligible: 02/01/2009 – 03/31/2009	\$3,724 Maint. \$589 Admin.
#15	The foster care provider did not have all of the safety checks required for full licensure prior to the child's placement in the home during the period that fell within the PUR. [§472(b) and (c) of the act; 45 CFR §§1356.71(d)(1)(iv), 1356.30(a), and 1355.20] Ineligible: 01/24/2008 – 02/28/2009	\$158 Maint. \$0 Admin.

Total: \$4,471.00

Non-error Cases with Ineligible Payments

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
#75	Duplicate payments were made for a period of 12 days for a title IV-E eligible child. Both an out of home maintenance and an emergency foster care payment were made for the same period. [§475 (4) of the Act; 45 CFR 1356.60(a)(1)(i)] Ineligible: 10/20/2008 – 10/31/2008	\$505 Maint.

Total: \$505.00

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.

Issue # 1: Judicial Determinations Regarding Reasonable Efforts to Finalize a Permanency Plan. One (1) case was in error because the judicial requirement of “reasonable efforts to finalize a permanency plan” was not satisfactorily met. Although Nebraska, 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, this requirement was not met for this case.

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. 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: NDHHS should continue to work with the Nebraska Court Improvement Project and the Judiciary to develop and implement procedures to ensure that the court makes timely findings of whether the State made “reasonable efforts to finalize the permanency plan.” Model court orders have been developed to instruct the courts on making child-specific, explicit findings. However, they are not being used consistently nor are they being completed as intended. The accuracy and reliability of eligibility determinations generally are increased through training of the judiciary and other court officials to correct delays in judicial findings as well as to secure court orders that reflect title IV-E criteria on legal authority, best interest, and reasonable efforts. Staff training will help to ensure workers make eligibility decisions based on the elements needed for compliance and to eliminate the authorization of payments prior to establishing compliance with the requirements. In addition, CB suggests that the State put in place a quality assurance system to monitor the accuracy of eligibility determination and claiming processes.

Issue #2: *Foster homes being licensed without the required safety checks.* One (1) case was in error because not all of the background checks required by the State for full licensure of a foster home were completed prior to licensure.

Title IV-E Requirement: Consistent with the Federal provisions at §471(a)(20)(A) of the Act and 45 CFR § 1356.30 (a) and (b) the State must provide documentation that criminal records checks have been conducted with respect to prospective foster parents.

Recommended Corrective Action: The State should develop a mechanism to assure that all of the required background checks are completed for all of the adults living in a prospective foster home as required in the State’s licensure policy. In addition, the State should consult with the authority that licenses child placement facilities to assure that background checks are being completed on all of the employees in the facility. The licensing agent then needs to maintain the documentation that assures the facility is completing the background checks.

Issue #3: *Inability to make changes in payment history of children in care.* The N-FOCUS (Nebraska’s Statewide Information System) does not correctly track changes in placements or permanency hearings and attach the proper payment to the correct placement or eligibility criteria. Because of the underlying programming errors, when the State elects to fund an initial foster care placement through another payment source, the State is unable to reverse the claim and submit a retroactive claim for title IV-E reimbursement in the case. The programming error is an ongoing problem that was an issue in the 2006 eligibility review.

Title IV-E Requirement: Consistent with Federal provisions at §472(a) of the Act and 45 CFR §1356.21, foster care payments may begin with the month in which a child is

determined to meet the initial title IV-E eligibility criteria and continue until the child is determined to be no longer eligible.

Recommended Corrective Action: The State has initiated steps to correct this deficit in N-FOCUS. It is CB's recommendation that this deficit be corrected quickly. The proposed changes would eliminate the extra step and time needed for someone in the program area to request changes to funding sources in the finance department. It would also eliminate 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. The following are examples:

Automated Eligibility Determinations: The State has an automated eligibility process for determining title IV-E eligibility through an automated data system which facilitates timely eligibility decisions and tracks eligibility throughout the foster care episode. The system is able to interface electronically with other State and Federal agencies such as the Department of Labor, Child Support, Vital Statistics, Social Security Administration and Internal Revenue to obtain information pertinent to determining financial need and deprivation for AFDC eligibility. The system is designed to capture case data used to calculate a child's eligibility so that it is available for review and audit. This provides a safeguard for ensuring accurate eligibility determinations. Because of the improper payment issues identified in this review, CB expects the State to include in its system modifications additional fiscal controls to capture more detailed information about payment sources and to modify system edits to guard against underpayments from title IV-E funds.

Designated Staff to Complete Eligibility Determinations: The State continues to have designated staff in each of the geographic service areas to complete the automated eligibility determinations. Although this practice has been in place a number of years, the practice continues to be an effective management tool. The designated staff has special training in completing the eligibility based on information provided by the field staff and through the N-FOCUS system. Refresher training in the eligibility requirements for title IV-E maintenance payment may be needed (1) to ensure that this staff is looking at the criminal background checks; (2) to ensure that foster homes are meeting the safety standards required for full licensure; and (3) to ensure that reasonable effort determinations by the courts are made timely.

Collaboration with the Judicial System: The State has worked with the Court Improvement Project (CIP) as well as judges to refine court orders. The CIP has developed model court orders to use for the various types of hearings. In addition, they

have provided training to the judges and county attorneys. The central office of NDHHS has also worked with judges throughout the State by reviewing orders submitted by the judges to determine if the orders contain explicit, child-specific determinations for “contrary to welfare” and “reasonable efforts.” Through these efforts, the written orders issued by the court following a ruling have improved since the last review. However, more clarity about the specific finding is a continuing need in some court orders. It is CB’s recommendation that that CIP and NDHHS continue to collaborate on effective ways to improve the court orders.

Disallowances

A disallowance in the amount of \$3,882.00 in maintenance payments and \$589.00 in related administrative costs of Federal Financial Participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of \$505.00 in maintenance payments are disallowed for title IV-E foster care payments claimed improperly for the non-error case. The total disallowance is \$4,976.00 FFP. The State also must 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 the State’s ongoing efforts to improve its title IV-E foster care eligibility determination process, CB recommends that NDHHS 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.