

**State of New Mexico
Primary Review
Title IV-E Foster Care Eligibility**

**Report of Findings for
October 1, 2014 - March 31, 2015**

Introduction

During the week of September 20, 2015, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review (IV-E review) of the state's title IV-E foster care program. The IV-E review was conducted in collaboration with the State of New Mexico Children, Youth and Families Department (CYFD) and was completed by a review team comprised of representatives from CYFD, New Mexico Court Improvement Program (CIP), the Navajo Nation, CB Central (CO) and Regional Offices (RO), a cross-state peer reviewer, and ACF Regional Grants Management Office (RGMU). The IV-E review was conducted at a CYFD office located in Albuquerque, New Mexico.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether the CYFD 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 for a period during the six-month Period Under Review (PUR) of October 1, 2014 – March 31, 2015. 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 77 cases from the original sample plus 3 oversample cases. Three (3) cases were excluded from the original sample because no title IV-E maintenance payment was made for the PUR. The state provided documentation to support excluding these cases from the review sample and replacing them with the 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 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
- Safety requirements for the child's foster care placement as required at 45 CFR §1356.30.

Case file information for each child in the selected sample was reviewed to verify title IV-E eligibility. Information from the foster care provider's file also was examined to ensure the foster family home or child-care institution in which the child was placed during the PUR was licensed or approved and that safety considerations were appropriately addressed. Payments made on behalf of each child were reviewed to verify the expenditures were properly claimed 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 activity date. The CB and the state agreed that, subsequent to the on-site review, the state would have two weeks to submit additional documentation for a case that during the onsite review was identified as in error, in undetermined status or had an ineligible payment. The CYFD did not submit any additional documentation to date for cases identified as in error or ineligible; therefore, the finding remains unchanged from the results identified during the IV-E review week.

Compliance Finding

The review team determined that 78 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. There were two (2) cases determined as in error for either part or all of the review period and four (4) non-error cases were ineligible for federal funding for a period of claiming for the reasons that are identified below in the "Case Record Summary" section of the report. 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.

Based on the review findings, the Children's Bureau has determined that the CYFD title IV-E foster care program is in substantial compliance with federal eligibility requirements for the PUR

because the number of cases in error is fewer than four (4). The team did not identify in the review sample any underpayments costs that were eligible for payment under title IV-E. The next review, which will be a primary review, will be held within three years.

Case Record Summary

The following charts record the error cases; non-error cases with ineligible payments; reasons for the improper payments; improper payment amounts; and federal provisions for which New Mexico CYFD did not meet the compliance mandates.

Error Cases

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
NM 02	<p>Judicial determination of reasonable efforts to finalize permanency plan not attained. [§472(a)(2)(A)(ii) of the Act and 45 CFR §1356.21 (b)(2)]. The child was in care 12 months as of January 2015, and a review hearing was due that month.</p> <p>Ineligible: 02/01/2015- Present Reported Disallowance Period: 02/01/2015 - 02/28/15</p>	<p>Maintenance \$ 468.00</p> <p>Administrative \$ 307.00</p>
NM 67	<p>A IV-E claim was made for an activity date with a previous foster parent after the child was moved to another home that was provisionally licensed. [§472 (c) of the Act and 45 CFR § 1355.20(a) and §1356.71 (d)(1)(iv)]</p> <p>Ineligible: 02/28/2015 Reported Disallowance Period: 02/28/2015 – 02/28/2015</p>	<p>Maintenance \$ 13.00</p> <p>Administrative \$ 0</p>

Maintenance
\$ 481.00
Administrative
\$ 307.00

Total: \$ 788.00

Non-error Cases with Ineligible Payments

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
NM 19	<p>Payments made for placement with a provider that was not fully licensed. [§472 (c) of the Act and 45 CFR § 1355.20(a) and 45 CFR §1356.71(d)(l)(iv)]</p> <p>Ineligible: 04/01/2014 - 08/31/2014 Reported Disallowance Period: 04/01/2014 - 08/31/14</p>	<p>Maintenance \$ 2752.00</p> <p>Administrative \$ 1503.00</p>
NM 20	<p>Payments were made for dates before eligibility requirement of "reasonable efforts to prevent removal" was met. The otherwise eligible child was removed on February 25, 2011 and the requirement was met the following month.[§472(a)(3) and 45 CFR §1356.71(d)]</p> <p>Ineligible: 2/25/11 – 2/28/11 Reported Disallowance Period: 2/25/11 – 2/28/11</p>	<p>Maintenance \$ 113.00</p> <p>Administrative \$ 0</p>
NM 78	<p>A duplicate payment was made for placement with a provider for the same service dates. [§475 (4) of the Act and 45 CFR § 1356.60(a)(l)(i)]</p> <p>Ineligible: 3/26/13 - 3/31/13 Reported Disallowance Period: 3/26/13 – 3/31/13</p>	<p>Maintenance \$ 46.00</p>
NM 79	<p>Payments made for placement with a foster family home that was not fully licensed. [§472 (c) of the Act and 45 CFR § 1355.20(a) and 45 CFR §1356.71 (d)(l)(iv)]</p> <p>Ineligible: 6/25/14 - 12/01/14 Reported Disallowance Period: 6/25/14 – 6/29/14</p>	<p>Maintenance \$ 60.00</p>

Maintenance

\$ 2971.00

Administrative

\$ 1503.00

Total: \$ 4474.00

Areas in Need of Improvement

The findings of this review indicate that the CYFD 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 the state should undertake.

Issue #1 - Unallowable Program Costs:

Systems were not in place to prevent title IV-E payments for unallowable costs, such as when children move to placements unallowable under the title IV-E program. For example, title IV-E maintenance was claimed for foster care costs in an error case (NM 67) and two improper payment cases when the child was moved to a home that was not fully licensed. During the 2012 IV-E review, the one error case identified also involved foster care costs claimed for a child that had moved to a home that was not fully licensed. In sample case (NM 78), a cost was claimed twice for the same foster care provider, and in another case (NM 20) ineligible payments were made for dates before the month the child's eligibility began.

Title IV-E Requirement:

Consistent with the federal provision at 45 CFR §1356.60(a)(i), and 45 CFR §1355.20 title IV-E foster care maintenance assistance payments may be claimed only for the cost of providing certain expenditures for eligible children in allowable foster care placements covered within the federal definition of foster care maintenance at §475(4) of the Act.

Recommendations to address case errors and improper payments:

The state's FACTS (Family and Child Tracking System) is the automated system that monitors the criteria for title IV-E eligibility for children in foster care and that tracks payments to foster care providers. Consultations with the state established that edits are not in place in the system to adjust title IV-E claims for payments claimed when a child is moved to an unallowable placement. Processes should be developed and implemented to provide for timely adjustment of federal funds when claimed in error. Adjustment to federal funds should be made during the quarter that the erroneous claim was made. The state may continue to pursue recoupment of ineligible state funds from the foster care provider, but adjustment of the title IV-E funds should not be delayed based on the status of the payee making restitution to the state.

The following recommendations could prevent these kinds of ineligible payments.

- A quality assurance process developed so that timely child placement data entry can be monitored. For example, FACTS could generate a placement report to be used by supervisors in order to monitor child placement entry during regularly scheduled worker and supervisor conferences. If caseworkers do not enter placement changes timely and accurately, the system cannot recognize that the child is no longer title IV-E eligible when the child changes placement to an unlicensed setting.
- All agency staff, especially the field staff (caseworkers and supervisors), must understand the title IV-E eligibility requirements and improve documentation and up-to-date information in FACTS to support title IV-E eligibility.
- FACTS could be upgraded to allow field staff to update placement information via their state issued mobile phone.

As noted in discussions with the state prior to this review and while onsite, New Mexico could not easily produce a complete payment history for the sample cases. The finance system does not have an efficient interface with FACTS which results in the following:

- Prior period adjustments made by administrative services are not reflected in the system; and
- The payment history did not accurately reflect the cost claimed to IV-E foster care maintenance and administration during the PUR, which required additional research and documentation to determine payment amounts.

Addressing these payment issues will also eliminate the issues that lead to the ineligible payments found during this review.

Issue 2 - Court determinations: Reasonable efforts to finalize permanency plans:

Title IV-E eligibility requirements include protections for children and families as an important aspect of eligibility criteria. The title IV-E protections at §471(a)(15)(B)(ii) and (C) of the Act and 45 CFR § 1356.21(b)(2) & (d) related to judicial determinations were developed to ensure that children placed in foster care are provided timely permanency outcomes.

A missed permanency review hearing resulted in an error case (NM 02) due to an untimely finding of whether the agency made reasonable efforts to finalize the child's permanency plan. Additionally, several orders in other courts did not contain a date for the hearing in the body of the order or a date of the judge's signature. It is very helpful for the court orders to have the date of the hearing within the body of the order since the court's file stamp may be applied as long as a week after the hearing, or be illegible, or the judge's signature may be affixed several days later. The lack of an accurate date could result in a judicial finding being inaccurately attributed to the wrong month, thereby impacting a child's eligibility.

A number of court documents contained typographic errors, including errors on dates in the body of the order. For example, birth certificates of several children contained different names or spellings than those found in the affidavit and court orders. Some orders did not address both parents when both were in the home and the petition had counts enumerated against both parents.

Title IV-E Requirements ,

To maintain title IV-E eligibility in a judicial removal, there must be an annual judicial determination to the effect that the title IV-E agency has made reasonable efforts to finalize the child's permanency plan as specified in §471(a)(15)(B)(ii) and (C) of the Act. A judicial determination must be child specific and made on a case-by-case basis, explicitly stated in the court orders and timely.

Recommendations to address case errors:

The one error case due to a missed review is not consistent with the timeliness of permanency review hearings and judicial findings in other judicial districts in the state noted during this review or with those found during the 2012 IV-E review. Since this was found in only one case,

it suggests possible unusual or unique circumstances related to the specific court. The CYFD leadership and executive legal staff can take action with the Administrative Office of the Courts to ensure the required judicial determinations are made as required and to ensure court orders contain accurate and sufficient information.

Additional Concerns

Case Record Review. For this review, the CYFD provided only the bare minimum case contents to reviewers to determine eligibility of children and providers in the sample during the PUR. Although the complete case records were onsite, they were stored in a different location. Absent the ready availability of complete case records, or even the complete portion of the record for the period under review, reviewers raised many questions that required agency staff be detailed to find the portions of the file necessary to answer those questions. However, records that did not contain complete case documents, such as those associated with ongoing judicial determinations, combined with the payment history issues noted above made it impossible for reviewers to determine an accurate accounting of potential underpayment amounts. Furthermore, some criminal records checks resulted in criminal histories returned for foster parents and the absence of a full record prevented clear assessment of how that history was resolved in order to issue a full license in accordance with agency policy.

Provisional Licenses. The state's licensing policy permits provisional licenses for relative caregivers for a temporary period in order to complete the assessment process for the home. The provisional license is intended to allow for relative placements to occur quickly. These homes generally are state-funded until they become fully licensed, which should occur within 60 days, or 90 days if an extension is granted. The review found a number of provisionally licensed homes that were not updated to full license in accordance with agency policy. Some provisional licenses were found that were extended to 24 months. The agency's failure to comply with its state policy for licensure resulted in a loss of title IV-E eligibility for children placed in those homes.

Financial Reporting Issues. During the 2012 IV-E review, it was noted that fiscal adjustments associated with changes in eligibility or placement status that impact payments were not being made. After that review and prior to this 2015 IV-E review, inquiries to CYFD about the status of the agency's efforts to develop a process to capture such adjustments were made by ACF's Region 6 Office of Grants Management both verbally and in writing. Based on the last two quarterly submissions of the CB form CB 496, it appears CYFD has begun to implement such a process, but there are still some areas that need attention. A review of the payment history provided by CYFD for this review highlighted various areas that need to be addressed to include:

- **Overpayment/Underpayment Recapture** – Currently there does not appear to be a way to consistently document that overpayments are being captured and never charged to the federal title IV-E program. The payment history provided only displayed the entire payment absent any adjustment. An example can be found in case (NM 67) for the service period 02/01/15 through 02/28/2015. It is recommended that CYFD develop a process or procedure that will document the actual amount that was charged to the federal title IV-E program.

- Service Date Eligibility Issues – While it appears FACTS is designed to ensure that only reimbursable IV-E costs are charged to the federal title IV-E program, FACTS does not appear to allow display of the specific service date charged to the federal title IV-E program. This results in "Split Payments" where instances of ineligibility for a portion of the month are shown on the payment history as two payments for the same service dates with one shown as reimbursable to the federal title IV-E program and the other shown non-reimbursable. While a unit column is used to show the number of units charged or not charged, it is nearly impossible to determine which service dates those units actually are reporting. An example of this may found in case (NM 37) for services dates 0301/2015 through 03/12/2015.
- There also were several instances in the payment history where incidental costs, such as clothing, are reported with a service period spanning several days, months, or even longer. It is recommended that CYFD develop a process or procedure that will accurately reflect the specific date a cost was incurred.
- Seventh (7th) Quarter "Look back" -The CYFD reports having implemented a process of reviewing in the 7th quarter all the claims in that and the prior 6 quarters to find any adjustments that are necessary. That process is reported to be a FACTS report that is provided to the state's Administrative Services division to use in its review of claims made in the SHARE system, which is the state's information system for financial management. It is recommended that a process be developed for an automatic set date for when the "look back" report is generated and provided to Administrative Services and allowing completion of an accurate federal fiscal report with form CB 496.

Program Strengths & 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.

Court Documentation. The quality of court documentation found in New Mexico has developed through the collaborative work of the CYFD building on its strengths and collaboration with the Children's Court Improvement Commission (CCIC). Joint training across the state has educated both the agency and courts of the importance of the judicial determinations to the lives of children before the court. That shared commitment supports field staff in efforts with compliance, and the FACTS capacity for creating the affidavit and case plan allows them to readily describe those efforts. Finally, the agency's children's court attorneys provide the representation and guidance to ensure all the facts field staff has discovered are presented. Every case in the sample contained an affidavit to the court with specific and comprehensive details of the reason allowing the child to remain in the home was contrary to the welfare of the child and extensively documented the efforts made to prevent the removal of the child. The subsequent Ex Parte and Adjudicatory and Dispositional court orders were child specific and detailed the court's findings about who the children were removed from, the reasonable efforts to prevent removal, and why remaining in the home was contrary to the child's welfare. Likewise, the permanency review orders were found in all but the error case to contain similar levels of detail

and specificity on the reasonable efforts made by the agency to achieve the child's permanency plan and incorporated findings on the agency's plan for the child. Many of the cases contained court orders and documents that reflected the agency's efforts to maintain important family connections for children by placing children in relative homes. The state requires fingerprint-based background checks of the relatives through local, state and national criminal databases, but allows, as noted above, for such placements to occur quickly by offering provisional licensing.

Licensing and Safety. Uniform standards for licensing of foster homes in New Mexico reportedly are consistent with the best interest and safety of children regardless of their foster care placement setting in the state. Every person seeking to become a licensed foster parent for the department or for a child placement agency must complete a criminal records check (CRC). Any other adults in the home must also complete the check. The check must include a national criminal records check (F.B.I. check), a statewide check through the New Mexico state police and local police check. State law has established a procedure where for every person that has undergone such a CRC any new charge will automatically be reported to the department, which is referred to as "rap back" by CYFD.

For all adults and children in the home a check of the state central registry of child abuse, neglect, and exploitation also must be completed. All applicants must complete prescribed training and a home study to ensure the suitability of the home for placements. Every person licensed must be reviewed every 24 months to allow the department to make redetermination of the suitability of the home.

The cases examined in the review reflected the strong policy and procedures for the licensing of foster homes that New Mexico implemented many years ago. Fingerprint-based CRCs on primary caregivers were required in New Mexico well before these checks were required under federal law. All cases in the sample contained documentation of the required criminal background checks.

Timely recertification of foster homes (every two years) was found in most sample cases, and where the agency deadline was missed, title IV-E program claims stopped. We saw very few children in institutional or congregate care in the review sample. In addition, in many cases, reviewers noted children had only a single placement during their time in care. Of those children that did change placements, the moves were few and often to relative homes.

AFDC Eligibility Determinations. A specialized unit of state IV-E Eligibility Specialists complete determinations based on county assignments. The specialists are issued a reference guide based on the state's AFDC plan in effect as of July 1996 and are periodically trained on the eligibility requirements. The FACTS also is programmed with the 1996 income standards for calculation purposes, including the two-step income determination. Specialists review documents for each of the AFDC eligibility criteria and finalize the eligibility determinations within FACTS.

For determining eligibility, the review team found the agency obtains family financial information quickly through worker diligence and automated systems that interface with FACTS to show financial circumstances that allow eligibility staff to reach accurate and timely eligibility decisions. The IV-E Specialists have access to public and private data from systems such as child support

enforcement, the Social Security Administration, Department of Labor, Medicaid, and private income verification through "The Work Number". Specialists also use birth certificates, hospital records and other documents to verify eligibility. The initial determination summaries in FACTS provided good contextual information. The automated system and eligibility summary seems an excellent means to timely document and report the decision on eligibility.

Disallowance

A disallowance in the amount of \$481 in maintenance payments and \$307 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 \$2971 in maintenance payments and \$1503 in related administrative costs of FFP are disallowed for title IV-E foster care payments claimed improperly for the non-error cases. The total disallowance as a result of this review is \$5262 in 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, the CB recommends New Mexico 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. The CB Regional Office will continue to partner with CYFD to address the areas needing improvement listed in this report and other areas identified through its internal oversight initiatives in relation to its title IV-E program to improve its overall program performance.