

Nevada Title IV-E Foster Care Eligibility Review Final Report

Period Under Review: April 1, 2010 – September 30, 2010

Introduction

During the week of March 14, 2011 to March 18, 2011, the Children's Bureau (CB), in collaboration with the Nevada Division of Child and Family Services (DCFS), conducted Nevada's title IV-E Foster Care Eligibility Review. The review team was comprised of representatives from the State agency, county child welfare agencies, the Court Improvement Program, Tribal partners, the CB Regional Office, and the CB Central Office.

The purposes of the title IV-E Foster Care Eligibility Review are (1) to determine whether title IV-E foster care maintenance payments were made on behalf of eligible children and to qualified homes and institutions in accordance with 45 CFR 1356.71 and Sections 471 and 472 of the Social Security Act (the Act); (2) to identify improper payments (e.g., overpayments, underpayments,); and (3) to identify promising practices and/or needs for training and technical assistance.

Scope of the Review

The review encompassed title IV-E foster care cases on whose behalf a title IV-E foster care maintenance payment was made for placement services rendered during the period under review (PUR) of April 1, 2010 to September 30, 2010. A computerized statistical sample of 100 child welfare cases (80 sample and 20 oversample cases) was drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data transmitted by the State agency to CB for the PUR. Three sample cases were documented as not having a title IV-E payment claimed for a period during the PUR and were replaced with cases from the oversample.

For each sample case, reviewers determined whether appropriate documentation existed to substantiate compliance with the following requirements:

1. Judicial determinations regarding
 - contrary to the welfare pursuant to Section 472(a)(2)(A)(ii) of the Act and 45 CFR 1356.21(c);
 - reasonable efforts to prevent removal pursuant to Section 472(a)(2)(A)(ii) of the Act and 45 CFR 1356.21(b)(1); and
 - reasonable efforts to finalize permanency pursuant to Section 472(a)(2)(A)(ii) of the Act and 45 CFR 1356.21(b)(2);
2. Voluntary placement agreements pursuant to Sections 472(a)(2)(A)(i), 472(e), 472(f), and 472(g) of the Act and 45 CFR 1356.22;
3. State agency responsibility for placement and care pursuant to Section 472(a)(2)(B) of the Act;
4. Aid to Families with Dependent Children (AFDC) eligibility (as of July 16, 1996) pursuant to Section 472(a)(3) of the Act;

5. Placement in a licensed foster family home or childcare institution pursuant to Sections 472(b) and (c) of the Act and 45 CFR 1355.20(a); and
6. Criminal records check and other safety requirements for foster care providers pursuant to Section 471(a)(20) of the Act and 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 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 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.

Compliance Finding

The review team determined that 79 of the 80 cases met eligibility requirements (i.e., were deemed to be non-error cases) for the PUR. One (1) case was determined to be in error for either part or all of the PUR and fifteen (15) 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 case and non-error cases with ineligible payments, are being disallowed. In addition, three (3) non-error cases were identified to have periods of eligibility for which the State did not claim allowable title IV-E maintenance payments. Because the number of cases in error is fewer than four (4), Nevada DCFS is found to be in substantial compliance for the PUR.

Case Summary

The following charts record the error case; non-error cases with ineligible payments; underpayments; reasons for the improper payments; improper payment amounts; and Federal provisions for which the State did not meet the compliance mandates. Note that the calculation of erroneous payments is based on the Federal Financial Participation (FFP) rates of the administrative and maintenance costs at the Federal Medical Assistance Percentages assigned to the State for the applicable years(s) for each sample case.

Error Case

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
9	The Agency failed to ensure that a staff member rehired at a corporation group home had re-cleared the State’s background clearance process prior to rehire. The staff person was allowed to work from 3/30/10 to 6/30/10 without the completion of the appropriate criminal background checks and title IV-E payments were claimed for the period the requirement was not fully met. [45 CFR 1356.30(f)] Ineligible Period: 3/30/10 – 6/30/10	\$2,079.41 Maint. \$1,917.00 Admin.

Total: \$3,996.41

Non-error Cases with Ineligible Payments

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
	<i>Payments Prior to Home Licensed/Approved</i>	
46	Out-of-state placement was not licensed Section 472(b) and (c) of the Act and 45 CFR 1355.20(a) Ineligible Period: 12/17/98 – 12/31/98	\$90.00 Maint.
	<i>Lack of reasonable efforts</i>	
13	Judicial determination of reasonable efforts to finalize permanency plan was not attained. Section 472(a)(2)(A)(ii) of the Act; 45 CFR 1356.21(b)(2) Ineligible Period: 5/1/07 – 9/30/07	\$2,001.53 Maint. \$2,866.00 Admin.
	<i>Criminal Background Checks</i>	
53	Criminal background checks (FBI) were not completed. Section 471(a)(20) of the Act and 45 CFR 1356.30 Ineligible Period: 11/23/09 – 11/30/09	\$151.26 Maint.
	<i>Incorrect Rate for Provider/Service Type</i>	
72	Incorrect rate was paid for provider service type. 45 CFR 1356.60 and section 475(4) of the Act Ineligible period: 9/10/09 – 9/30/09	\$308.91 Maint.
	<i>Two rates paid to the same provider</i>	
26	Same provider paid two different rates for three days. 45 CFR 1356.60 and section 475(4) of the Act Ineligible Period: 1/29/09 – 1/31/09	\$38.39 Maint.
	Same provider paid two rates for the entire month. 45 CFR 1356.60 and section 475(4) of the Act Ineligible Period: 11/1/09 – 11/30/09	\$401.84 Maint.

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
49	Same provider paid two rates for one day. 45 CFR 1356.60 and section 475(4) of the Act Ineligible Period: 10/25/09	\$12.97 Maint.
	<i>Two payments for the same day</i>	
6	Two payments for the same day and activity. 45 CFR 1356.60 and section 475(4) of the Act Ineligible Period: 11/29/09	\$13.21 Maint.
17	Two payments for the same day and activity. 45 CFR 1356.60 and section 475(4) of the Act Ineligible Period: 3/1/05	\$19.71 Maint.
	Two payments for the same day and activity 45 CFR 1356.60 and section 475(4) of the Act Ineligible Period: 12/28/08	\$13.10 Maint.
27	Two payments for the same day and activity. 45 CFR 1356.60 and section 475(4) of the Act Ineligible Period: 3/24/10	\$14.39 Maint.
33	Two payments for the same day and activity. 45 CFR 1356.60 and section 475(4) of the Act Ineligible Period: 6/11/09	\$16.86 Maint.
41	Two payments for the same day and activity. 45 CFR 1356.60 and section 475(4) of the Act Ineligible Period: 9/15/09	\$14.39 Maint.
59	Two payments for the same day and activity 45 CFR 1356.60 and section 475(4) of the Act Ineligible Period: 6/3/09	\$13.21 Maint.
61	Two payments for the same day and activity 45 CFR 1356.60 and section 475(4) of the Act Ineligible Period: 10/1/10	\$13.21 Maint.
68	Two payments for the same day and activity 45 CFR 1356.60 and section 475(4) of the Act Ineligible Period: 11/2/09	\$13.21 Maint.
74	Two payments for the same day and activity 45 CFR 1356.60 and section 475(4) of the Act Ineligible Period: 10/1/10	\$13.21 Maint.

Admin: \$2,866.00
 Maint.: \$3,149.40
 Total: \$6,015.40

Underpayment Cases

Sample Number	Underpayment Reason & Eligibility Period	Underpayments (FFP)
52	System stopped title IV-E payments before license renewal was entered into system and no claim was made for the eligible period. Eligible Period: 6/15/10 – 6/30/10	\$381.75 Maint.
76	Unknown reason for not claiming Eligible Period: 7/20/10 – 8/31/10	\$449.13 Maint.
79	Unknown reason for not claiming Eligible Period: 4/1/09 – 3/31/10	\$4,225.72 Maint.

Total: \$5,056.60

Areas in Need of Improvement

The findings of this review indicate that DCFS 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: Safety Requirements for Staff. One (1) case was found to be in error because a safety background check meeting State requirements for the placement type was not performed when a previous employee was rehired to work as a staff member caring for children. The State of Nevada requirements that were not met include a law enforcement check and submission of fingerprints at the time of employment and subsequent receipt of satisfactory results from the FBI fingerprint check.

Title IV-E requirement: Federal provisions at 45 CFR 1356.30(f) require States to set procedures to address safety considerations with respect to childcare facility staff. The State must provide documentation verifying that the safety considerations with respect to the caregiver staff are addressed in accordance with the State’s requirements and that these requirements are satisfied for the duration of the child’s placement for which title IV-E is claimed.

Recommended Corrective Action: Nevada’s licensing authority should review and strengthen its guidance to clearly reinforce the requirement that safety background checks be completed when caregiver staff are rehired. In general, the State should have in place procedures to ensure that all safety standards are being followed, verified on a regular basis, and documented. The requirement must be satisfied before title IV-E payments are claimed on behalf of a child placed in an out-of-home setting.

Issue #2: State agency responsibility for placement and care. In two cases in the review sample, CB noted concerns about the ambiguity of the language in some court orders regarding the State’s responsibility for placement and care for children placed with relatives. Specifically, these court orders had language that awarded “control and custody” or “formal supervision.” For purposes of this review, CB gave deference to DCFS’ proffered explanation that “formal supervision” through DFS and legal custody to DFS equated to the court granting the agency

placement and care responsibility for the child. However, DCFS must make sure that the court's findings are explicit with language whose meaning is not implied but can be reasonably understood. The court's intent in the findings cannot be presumed. Such ambiguous language as noted in the sample cases in question might not be accepted as documentation of compliance with the requirement in future eligibility reviews.

Title IV-E requirements: Pursuant to Federal requirements in §472(a)(2)(B) of the Act and 45 CFR §1356.71(d)(iii), responsibility for placement and care of the child must be with the State or other public agency with whom the State has a written agreement in effect for title IV-E under §472(a)(2)(B) of the Act. The term placement and care means that the title IV-E agency is legally accountable for the day-to-day care and protection of the child who has been placed in foster care through either the requisite judicial determination order or a voluntary placement agreement. Placement and care responsibility allows the title IV-E agency to make placement decisions about the child. It also ensures that the title IV-E agency provides the child with the mandated statutory and regulatory protections, including those pertaining to case plans, administrative reviews, permanency hearings, and updated health and education records. Compliance with §472(a)(2)(B) of the Act and 45 CFR §1356.71(d)(iii) must be met for title IV-E eligibility. If the child is judicially-removed, official documentation, such as the court order, must clearly indicate that the State has responsibility for the placement and care of the child.

Recommended Corrective Action: DCFS should collaborate with its legal partners including the courts and Court Improvement Project to ensure that court orders clearly indicate that the State has responsibility for placement and care of each child for whom title IV-E payments are claimed. Training of the judiciary and personnel who prepare the written documents will help to secure court orders that reflect title IV-E criteria on legal authority, best interests and reasonable efforts. Staff training will help to ensure that 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.

Issue #3: Duplicate payments. In nine (9) of the cases reviewed, two payments were made for the same day and activity. In three (3) of the cases reviewed, two different provider rates were paid for the same time period. The high frequency of duplicate payments is one that has previously been identified as an issue of concern. During the 2008 eligibility review, there were 16 cases that fell in the duplicate payment category of ineligible payments.

Title IV-E requirement: Consistent with the Federal provision at 45 CFR 1356.60(a)(i), title IV-E foster care maintenance assistance payments may be claimed only for the cost of providing certain expenditures covered within the Federal definition of foster care maintenance payments at 475(4) of the Act. The state must document that foster care maintenance payments claimed for title IV-E reimbursement are for allowable expenditures in accordance with the statutory definition, are in amounts conforming to the State established rates of payment for the type and level of care provided, and reflect non-duplicative amounts of the cost of daily maintenance.

Recommended Corrective Action: As Nevada was advised in the findings of the 2008 eligibility review, DCFS must further explore the underlying reasons that overpayments occurred, develop a strategy to minimize such overpayments, and implement systemic or technology-related improvements that would minimize the occurrence of overpayments.

Given that, DCFS must institute safeguards such as edits in its payment system (UNITY) to ensure that overpayments, including duplicate payments, are not made or that alert staff when such payments have been made. Nevada is urged to take immediate action to correct this issue of concern.

Issue #4: Underpayments. There were three cases that in each case it was documented that the child had met all criteria for eligibility under title IV-E. However, DCFS did not claim maintenance payments for the maximum amount of time that it could have claimed for each child. The total amount that could have been claimed for these children is \$5,056.60. This figure represents a significant increase in the total amount of \$254 assessed for three cases during the 2008 eligibility review.

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: DCFS 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.

Additional Concerns

The following items represent several systemic issues identified as needing attention as part of the continuing efforts to enhance operations. While these issues do not directly relate to any of the cases with improper payments, they should be addressed as they could potentially have an impact on the future level of title IV-E claims for Nevada.

Waiver of licensing standards. The Nevada administrative code allows for waivers of licensing standards in relative and non-relative family or group homes, including waiving some safety standards in specified situations. Further, Nevada's policy consider these foster care placements fully licensed and title IV-E payments are claimed for the children in these placements even when the waiver is granted for a non-relative family or group home.

Title IV-E Requirement: Federal provisions at §471(a)(10) of the Act grants to States the responsibility for setting uniform standards of licensure. The provision also permits a waiver of any of these licensing standards, but only on a case-by-case basis for non-safety standards (as determined by the State) in relative foster family homes for specific children in care. Given this, a State may not claim title IV-E payments (or title IV-B payments) in instances where a waiver of the licensing standards is granted to non-relative foster family homes or group homes. A

State's failure to fully follow the requirements constitutes a violation of §471(a)(10) of the Act and indicates that Nevada is non-compliant with the State plan requirements under title IV-E.

Recommended Corrective Action: Nevada must review its licensing laws and policies and put in place measures to ensure full compliance with §471(a)(10) of the Act. In addition, DCFS must ensure it does not claim title IV-E funds in instances when compliance is not met.

Documentation of the measures completed to address this issue must be provided to the CB regional office to demonstrate that Nevada is in full compliance with the title IV-E state plan requirement. Failure to do so can cause CB to require DCFS to undergo a partial review of its title IV-E and title IV-B programs and engage in a program improvement plan to address nonconformity with the §471(a)(10) plan requirements.

Consolidated payment histories from UNITY. All of the State's foster care payments are entered into the State's UNITY system, except those payments made to Kidz Kottage, in Washoe County. Placement information, however, is included in the system. During the 2008 eligibility review and the current one, it was difficult to accurately track payments made on behalf of a specific child placed in this setting. As a result, CB had to use external, non-automated data to get these payment histories. The child's name, payment amount, and the number of days the child was in placement were entered manually by Nevada on a worksheet and involved several intermediate steps and significant paperwork. Such procedures do not support the proper administration of the State's title IV-E program. This process also lends itself to data error and inconsistencies.

Title IV-E requirement: In accordance with 45 CFR 1356.71(b)(2), a complete payment history must be provided for each case in the sample. The complete payment history consists of all foster care payments that include title IV-E maintenance payments and administrative costs claimed. The title IV-E foster care maintenance payments claimed on behalf of a child must be directly linked to the child.

Recommended Corrective Action: DCFS again is strongly urged to take the necessary steps to ensure its UNITY system maintains a consolidated record of all payments made on behalf of children in the State's foster care system. Consistent with 45 CFR 74.21, this record must include all information necessary to provide a complete and accurate account of payment activity for each child and provider. Nevada must be able to demonstrate that in every instance adequate financial standards are maintained in providing necessary information, guarding against payments for unallowable costs and ensuring payments for allowable costs.

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.

Judicial Determinations: Nevada judicial practices encourage timely reasonable efforts determinations. Determinations of reasonable efforts to prevent placement often were made in the initial removal order and judicial determinations of reasonable efforts were often made at hearings held at 6-month rather than 12-month intervals. The frequency of the court hearings

permitted the court to remain updated on the child's progress and changes in efforts toward permanency. Only one (1) case was found to have improper payments due to the judicial requirement not being satisfied. Many court orders from the rural counties and from Washoe County had judicial findings that reflected the individual circumstances of each child. However, this was not the case for a number of Clark County court orders. In Clark County, some court orders included statements that were not consistent with the circumstances of the case or the determination being made. Information in the court orders regarding reasonable efforts to prevent a placement did not always address the child's circumstances before entering care. Additionally, there were instances when information in the court order regarding reasonable efforts to finalize a permanency plan did not address the plan that had been in place for the child for an extended period. Nevada should continue to develop and implement, as well as train on, procedures to ensure that best legal and case practices are implemented statewide.

Eligibility Determinations: All cases demonstrated that the AFDC requirements for title IV-E eligibility were properly established at initial removal. Nevada has a comprehensive eligibility policy manual and standardized eligibility forms that promote uniformity across the child welfare jurisdictions. However, the Nevada eligibility policy manual's definition of the "eligibility month" should be revised to reflect Federal requirement that AFDC eligibility must be determined for (and must be initially met in) either the month the court proceeding leading to the requisite judicial determination is initiated, through a removal petition or removal court order, or the month the voluntary placement agreement is signed. Presently, the Nevada policy manual instructs the eligibility specialist to look at the month in which the court makes the contrary to the welfare determination as the "eligibility month." Training should be provided to ensure that all eligibility specialists use the correct month to determine when initial eligibility is met. The eligibility specialists have access to income verification systems which are used to document and support eligibility decisions.

Disallowances

A disallowance in the amount of \$2,079.41 in maintenance payments and \$1,917.00 in related administrative costs of FFP is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of \$3,149.40 in maintenance payments and \$2,866.00 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 \$10,011.81 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, CB recommends that Nevada examine the areas of concern identified in this report. The State should develop measurable, sustainable strategies that will target the root cause of the concerns and improve the foster care eligibility program. Appropriate corrective action must be taken in instances of noncompliance with Federal laws and regulations.