

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

**Report of Findings for
April 1, 2016 to September 30, 2016**

Introduction

The Children's Bureau (CB) of the Administration for Children and Families conducted a primary review of Nevada's title IV-E foster care program. Washoe and rural counties were included in the review; Clark County was excluded due to its implementation of the title IV-E Waiver Demonstration Project. The title IV-E foster care review (IV-E review) was conducted during the week of March 6, 2017 in collaboration with Nevada and was completed by a review team comprised of representatives from the state title IV-E agency, CB Central and Regional offices and a peer reviewer.

Key purposes of the IV-E review are (1) to determine whether Nevada's title IV-E foster care program is in compliance with 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 Nevada's financial claims to ensure appropriate payments are made on behalf of eligible children.

Scope of the Review

The IV-E review encompasses a sample of Nevada's foster care cases in which a title IV-E maintenance payment is claimed for an activity that occurred in the six-month period under review (PUR) of April 1, 2016 to September 30, 2016. A computerized statistical sample of 100 cases (80 cases plus 20 oversample cases) was drawn from data Nevada submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. Eighty (80) cases were reviewed, which consisted of seventy-six (76) cases from the original sample plus four (4) oversample (OS) cases. The four cases excluded from the original sample were cases #s 15, 34, 56 and 60. These cases were excluded from the original sample because it was determined that placement and care of the children originated and continued with Clark County. The Federal Information Processing Standard (FIPS) code assigned to these cases was incorrectly assigned the code for Carson City rather than for Clark County. It is unclear how these cases were coded incorrectly. We encourage Nevada to continue to investigate and monitor in an effort to resolve the issue.

In accordance with federal provisions at 45 CFR 1356.71, states are reviewed against 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 the 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 is reviewed to verify title IV-E eligibility. The foster care provider’s record also is reviewed to ensure the foster family home or child care institution where the child resided during the PUR is fully licensed and meets safety requirements. Payments made on behalf of each child also are reviewed to verify that expenditures are properly claimed under title IV-E and to identify underpayments eligible for claiming.

A sample case is assigned an error rating when the child is not eligible on the date of activity in the PUR for which title IV-E maintenance is claimed. A sample case is cited as non-error with ineligible payment when the child is not eligible on the activity date outside the PUR or the child is eligible in the PUR on the date of an unallowable activity and title IV-E maintenance is claimed for the unallowable activity in either situation. In addition, underpayments are identified for a sample case when the state unintentionally failed to 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 CB and Nevada agreed that Nevada would have two weeks following the onsite review to submit additional documentation for a case during the onsite review identified as in error, in ‘undetermined’ status, or not in error but with ineligible payments.

Compliance Finding

The review team has determined that 75 of the 80 sample cases meet all eligibility requirements (i.e., are deemed non-error cases) for the PUR. Five (5) cases are determined as in error for not meeting eligibility requirements either for periods only during the PUR or for a child’s entire foster care episode (cases # 9, 10, 31, 58, and 63). Four (4) non-error cases meet eligibility requirements for the PUR, but are found to have periods in a child’s foster care episode for which title IV-E maintenance payments are improperly claimed (cases # 39, 43, 49, and OS3).

The CB has determined that Nevada’s title IV-E foster care program is not in substantial compliance for the PUR. Non-substantial compliance in a primary IV-E review means the total number of error cases is five or more cases determined as not meeting eligibility requirements for the PUR. Supplemental findings for non-error cases with ineligible payments are not

considered in determining the state’s review results of non-substantial compliance with federal requirements.

In addition to the above five (5) error cases and four (4) non-error cases that are established as having ineligible payments, one (1) non-error case (#39) has periods of eligibility for which Nevada has not claimed allowable title IV-E maintenance payments; this case is determined to have underpayments.

Case Summary

The following charts record cases comprised of improper payment type: error cases, non-error cases with ineligible payments and underpayments; reasons for improper payments; improper payment amounts; and federal provisions for which Nevada does not meet 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, 2016 – September 30, 2016 | Improper Payments (FFP) |
|----------------------|--|--|
| #9 | <p>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);</p> <p>Child was placed in a non-licensed placement for which the state claimed one (1) day of maintenance costs.</p> <p>Ineligible: 07/12/2016</p> | <p>\$16 Maintenance</p> <p>\$0 Administrative</p> |
| #10 | <p>Responsibility for placement and care vested with the title IV-E agency, in accordance with § 472(a)(2)(B) of the Act and 45 CFR § 1356.71(d)(1)(iii);</p> <p>Placement and care responsibility not met due to child being discharged from foster care June 1, 2016 in order to enter into the military.</p> <p>Ineligible: 06/01/2016—06/14/2016</p> | <p>\$367 Maintenance</p> <p>\$0 Administrative</p> |
| #31 | <p>Responsibility for placement and care vested with the title IV-E agency, in accordance with § 472(a)(2)(B) of the Act and 45 CFR § 1356.71(d)(1)(iii);</p> <p>Placement and care responsibility was not vested with the state agency until 06/06/2016.</p> <p>Ineligible: 04/13/2016-05/31/2016</p> | <p>\$709 Maintenance</p> <p>\$496 Administrative</p> |

| Sample Number | Improper Payment Reason & Ineligibility Period April 1, 2016 – September 30, 2016 | Improper Payments (FFP) |
|----------------------|--|--|
| #58 | <p>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);</p> <p>Licensing criteria were waived for a non-relative provider: The waiving of certain licensing requirements is only permissible for relative placements.</p> <p>Ineligible: 04/03/2016-12/05/2016</p> | <p>\$3,615 Maintenance</p> <p>\$1,985 Administrative</p> |
| #63 | <p>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);</p> <p>Income eligibility not met: Father’s self-reported income not factored in the income eligibility determination process. In addition, there is no evidence to support parental deprivation as is required under title IV-E.</p> <p>Ineligible: For the entire foster care episode</p> <p>Reported Disallowance Period: 4/06/2013 -12/31/2016</p> | <p>\$29,802 Maintenance</p> <p>\$10,837 Administrative</p> |

Total Error Case Maintenance FFP: \$34,509
Total Error Case Administrative FFP: \$13,318

Non-Error Cases with Ineligible Payments:

| Sample Number | Improper Payment Reason & Ineligibility Period April 1, 2016 – September 30, 2016 | Improper Payments (FFP) |
|----------------------|---|--|
| #39 | <p>45 CFR §1356.60(a)(1)(i), claiming of title IV-E foster care maintenance payments is limited to the cost of providing certain expenditures covered within the federal definition of foster care maintenance at §475(4) of the Act; in addition to other requirements, claims must reflect non-duplicative amounts of the costs of daily maintenance.</p> <p>Claims were made twice for payments made to a single provider for the same month.</p> <p>Ineligible: 07/01/2014 - 07/31/2014</p> | <p>\$416 Maintenance</p> <p>\$0 Administrative</p> |

| Sample Number | Improper Payment Reason & Ineligibility Period April 1, 2016 – September 30, 2016 | Improper Payments (FFP) |
|----------------------|--|--|
| #43 | <p>Responsibility for placement and care vested with the state agency as stipulated in §472(a)(2)(B) of the Act and 45 CFR §1356.71(d)(1)(iii); Maintenance claims were submitted for payments made on behalf of the child prior to placement and care responsibility being vested with the state; placement and care was vested with the state on 12/07/15.</p> <p>Ineligible: 11/04/2015-11/30/2015</p> | <p>\$399 Maintenance</p> <p>\$248 Administrative</p> |
| #49 | <p>45 CFR §1356.60(a)(1)(i), claiming of title IV-E foster care maintenance payments is limited to the cost of providing certain expenditures covered within the federal definition of foster care maintenance at §475(4) of the Act; in addition to other requirements, claims must reflect non-duplicative amounts of the costs of daily maintenance.</p> <p>Nevada DCFS overpaid licensed provider. Two IV-E maintenance claims were submitted for payments made for a child for the same period with the same provider.</p> <p>Ineligible: 02/01/2013 and 05/01/2013</p> | <p>\$28 Maintenance</p> <p>\$0 Administrative</p> |
| OS#3 | <p>45 CFR §1356.60(a)(1)(i), claiming of title IV-E foster care maintenance payments is limited to the cost of providing certain expenditures per §475(4) of the Act; in addition to other requirements, claims must reflect non-duplicative amounts of the costs of daily maintenance.</p> <p>Two IV-E maintenance claims were submitted for payments made for a child for the same period but different providers.</p> <p>Ineligible: 8/31/2013</p> | <p>\$13 Maintenance</p> <p>\$0 Administrative</p> |

Total Non-Error Maintenance FFP: \$856

Total Non-Error Administrative FFP: \$248

Underpayment Case:

| Sample Number | Improper Payment Reason & Ineligibility Period April 1, 2016 – September 30, 2016 | Improper Payments (FFP) |
|----------------------|---|------------------------------------|
| #39 | All criteria were met for claiming IVE maintenance costs however, there were no title IV-E claims filed for payments made from 07/2015 through 12/2015 Eligible: 07/2015-12/2015 | \$2,535 Maintenance |

Total Underpayment FFP: \$2,535

Areas Needing Improvement

Findings of this review indicate Nevada needs to further develop and implement procedures to improve program performance in the following areas: (1) ensuring orders grant the title IV-E agency placement and care responsibility (2) preventing duplicate payments and (3) providing complete payment histories for all placement types

Issue #1: *Ensuring orders grant the title IV-E agency placement and care responsibility*

Cases #31, 10 and 43 all of which are located in rural counties lacked the required placement and care responsibility.

In error case #31, the court failed to grant the required placement and care responsibility to the agency in the initial protective custody order. Approximately two months later, an order was signed granting the agency placement and care responsibility.

In error case #10, the courts terminated the county's responsibility for placement and care in preparation for a youth who planned to enter the military.

Case #43 had similar issues related to placement and care which resulted in ineligible payments rather than an error case since the issues were not during the PUR.

Title IV-E Requirement:

Section 472(a)(2)(B) of the Social Security Act (the Act) requires that the responsibility for placement and care of a child be vested with the title IV-E agency administering the title IV-E plan approved under §471 of the Act. Placement and care means the title IV-E agency is legally accountable for the day to day care, protection and placement of the child who has entered foster care through either the requisite judicial determination or a voluntary placement agreement. Placement and care ensures the title IV-E agency provides the child with mandated statutory and regulatory protections.

Recommended Corrective Action:

Nevada's Department of Child and Family Service should coordinate with the State Court Improvement Program (CIP) to evaluate the manner in which court orders are generated in their court systems. It was noted that the issues related to these cases were located in the rural counties. Training on the requirements is advisable. The state CIP may wish to assess who prepares documents for judges' signatures and/or whether court order templates are being used to ensure all pertinent findings are considered and ruled on by the court.

Issue #2: Preventing duplicate payments

Three non-error cases (#39, 49 and OS3) were determined to have duplicate payments.

In cases #39 and #49, Nevada DCFS overpaid licensed providers. Two IV-E maintenance claims were submitted for payments made for a child for the same period for the same provider.

In case OS#3, the agency claimed title IV-E maintenance payment on behalf of the child with two different foster homes for the same service and same day of service.

Foster care maintenance payments may not be claimed twice for the same period of time and activity. Nevada indicates that, in part, the issue occurs when service authorizations for the same dates are entered into the system if the date is not modified as the child changes placement settings, therefore causing an overpayment.

Title IV-E Requirement:

Consistent with federal provisions at 45 CFR 1356.60(a)(1)(i), claiming of title IV-E foster care maintenance payments is limited to the cost of providing certain expenditures covered within the federal definition of foster care maintenance 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 state established rates of payment for the type and level of care provided, and reflect non-duplicative amounts of the costs of daily maintenance.

Recommended Corrective Action:

State staff indicated that the systematic issues related to these overpayments have been addressed. Staff reported that fixes were made in its State Automated Child Welfare Information System, UNITY, and safeguards have been put in place to prevent overlapping of service authorizations. We commend the state for correcting this issue and recommend that the state also develop a monitoring process to ensure the fixes to the system are, and continue to be, effective.

Issue #3: *Providing complete payment histories for all placement types*

During the review, federal staff discovered that the payment history reports submitted for purposes of the IVE review did not reflect the actual amounts paid on behalf of the title IV-E eligible children placed in Kids Kottage, a Washoe County placement facility. The amounts were inaccurate or missing altogether. This information was learned prior to the review as the federal team, including Office of Grants Management partners, reviewed the placement and payment histories. The team had assumed that three of the cases with Kids Kottage placements only in the PUR may have needed to be dropped from the sample because no title IV-E payment was noted in the payment history provided. The state later produced separate documentation to show that title IV-E payments were in fact claimed on behalf of those youth. In addition, during the week of the review Washoe County walked through the process that it uses to claim title IV-E costs for youth placed in this facility. The County uses a manual system to calculate and bill for title IV-E. This includes the use of different spreadsheets to calculate the total claimable amounts. The manual process creates uncertainty as to the accuracy and integrity of the data and reliability of the title IV-E claims made.

Payments for all other placements are generated by using information from UNITY.

Title IV-E Requirement:

Consistent with regulations at 45 CFR 1356.71(b)(2) the state must provide ACF with a complete payment history for each of the sample and over sample cases. All payments in the payment history should include:

- the invoice number
- the date of the invoice
- the amount paid and activity covered
- the type of activity and funding source
- the date of payment
- the date of payment adjustment and period covered
- the child's name and case number and
- the provider's name and number

Recommended Corrective Action:

The CB recommends that the state immediately modify the process of calculating, documenting, and tracking claims made for payments on behalf of eligible title IV-E children placed in Kids Kottage so they are consistent with all other placement types.

It was also noted during this review that a vast number of children, including infants, are placed in Kids Kottage as the initial placement setting when entering foster care. While the state informed us the number of placements in Kids Kottage was declining, we caution the state about the overuse of congregate care and encourage the state to continue its efforts to reduce these types of placements for children except when necessary to provide short-term supervision and structure or to ensure safety. Research indicates that children, especially those ages 12 and

under, should be placed in the least restrictive, most family-like setting possible with adults who are constant participants in their lives in order to develop healthy, secure attachments. Children who live in congregate care settings are at greater risk of developing physical, emotional and behavioral problems which lead to less desirable outcomes. We remind the state that Nevada is scheduled for its Child and Family Services Review (CFSR) in FY 2018. During that review, among other things, the CB will assess the extent to which children are stable in their placements and whether placements are made to meet their needs. The broad use of residential care settings, especially with the very young, will be subject to greater scrutiny at that time.

Program Strengths and Promising Practices

The following practices and processes were identified as areas of strengths for Nevada's title IV-E foster care program.

The collaborative efforts of the courts and the child welfare system resulted in judicial determinations of contrary to welfare and reasonable efforts being made timely. Cases are reviewed by the courts semi-annually exceeding the federal requirements for annual hearings in which the ongoing Reasonable Efforts to Finalize the Permanency Plan judicial determinations were made. The language within the court orders is consistent with the required judicial determinations. Court orders, specifically in rural counties, were thorough and informative. Some of these court orders clearly listed the efforts made by the agency to prevent the removal of the child from the home.

It was noted that some rural counties' initial reports are exemplary in the level of detail they provide. The reports are an excellent source of information that it appears would be very helpful when making eligibility determinations. The reports' level of detail helped clearly understand the child's circumstances upon removal; identified household members, deprivation factors, and efforts made to prevent the removal; touched upon financial circumstances of the family members; and identified the specified relative from whom the child was judicially removed.

Disallowances

A disallowance in the amount of \$34,509 FFP in maintenance payments and \$13,318 FFP in related administrative costs is assessed for title IV-E foster care payments that are claimed for error cases. Additional amounts of \$856 FFP in maintenance payments and \$248 FFP in related administrative costs of are disallowed for title IV-E foster care payments that are claimed improperly for non-error cases. The total disallowance as a result of this IV-E review is \$48,931 in FFP.

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

Next Steps

Federal regulations at 45 CFR § 1356.71(i)(2) require the development of a Program Improvement Plan (PIP) when a state is found not in substantial compliance in a primary review

of its title IV-E foster care program. The PIP must be developed by Nevada in consultation with the CB staff and must address, at a minimum, each area the IV-E review identified as needing improvement. Nevada is expected to work closely with the CB regional office for guidance and technical assistance throughout the PIP development and implementation processes.

The PIP must be submitted to the CB Region 9 office within 90 calendar days from the date Nevada receives this final report and accompanying report letter from the CB advising your title IV-E program is not operating in substantial compliance. The state is requested to electronically submit its PIP documents to the CB regional office.

The PIP must include the following elements, as noted in federal regulations at 45 CFR § 1356.71(i):

- specific goals for improvement
- action steps needed to correct each identified weakness or deficiency
- time frames for completing each action step

The CB does not require a state to use a particular format for its PIP. However, to assist the state with the PIP process, the CB has developed a standard template that is recommended for Nevada staff to use in preparing the PIP document for initial submission and for periodic reporting of progress to the CB regional office. The suggested template and instructions for completing it are included with the final report letter and are available on the CB Website at <http://www.acf.hhs.gov/programs/cb/monitoring/title-ive-reviews>.

Nevada is strongly encouraged to use the PIP process to examine program deficiencies and develop measurable, sustainable strategies that target the root cause of problems preventing Nevada from operating an accurate foster care eligibility program. The PIP planning and implementation process will provide Nevada with an excellent opportunity to engage the judiciary, licensing agency, and other state partners to develop strategies for making short-term and long-term changes necessary to improve state performance and service delivery. Nevada should also use the PIP process to enhance its internal quality assurance procedures to inform and eventually evolve into a systematic mechanism for continuous program improvement that support systemic change and sustain successful performance achievements over time. The CB through its Region 9 office will work with state staff to identify technical assistance needs and obtain assistance through our funded organizations to help the state develop and implement program improvement strategies.

The PIP development may necessitate making changes to your automated information systems. We encourage you to include Nevada data analysis staff and information technology staff in discussions with program staff about modifications. If Nevada state has an active information technology project that qualifies for title IV-E funding under federal regulations at 45 CFR §1355.52, the information technology changes made must be reported and approved through the process described in 45 CFR §1355.54.

A secondary review of 150 sample cases will be conducted, in accordance with 45 CFR §1356.71(j)(2), following the expiration of the Nevada's approved PIP completion date.