

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

**Report of Findings for
April 1, 2011- September 30, 2011**

Introduction

During the week of June 25, 2012, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of the New York's title IV-E foster care program. The review was conducted in collaboration with the New York State (NYS) Office of Children and Family Services (OCFS) and was completed by a review team comprised of representatives from NYS OCFS, NYS local social service districts, NYS Office of Court Administration – Court Improvement Program staff, the CB Central and Regional Offices, ACF Regional Grants Management, peer reviewers from Texas and Utah and two observers from the St. Regis Mohawk Tribe.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether NYS OCFS' 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 April 1, 2011 through September 30, 2011. A computerized statistical sample of 110 cases (80 cases plus 30 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 73 cases from the original sample plus 7 oversample cases. Five cases, samples #4, #26, # 32, #40 and # 77, were excluded from the original sample because the youth were over 18 years of age. The CB's policy is to exclude cases of youth over ages 18 and over if the State has an approved option in its titles IV-E and IV-A (AFDC) plans to serve these youth. Two cases, samples # 53 and #65, also were excluded from the original sample because there were no title IV-E foster care maintenance payments made for a period during the PUR. The State provided documentation to support excluding 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 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

A case folder of each child in the selected sample was reviewed to verify title IV-E eligibility. Foster care provider's documents were also examined to ensure the foster family home or child care 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 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 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.

Compliance Finding

The review team determined that all of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Because the number of cases in error is fewer than four (4), New York State OCFS is in substantial compliance for the PUR. The state is commended for its continuous efforts that have resulted in successful review performance from its past review findings of non substantial compliance in 2003 (31 errors cases; initial primary review), 2006 (13 errors cases; secondary review) to substantial compliance findings in 2009 (2 errors cases; primary review) and in this current primary review with 0 error cases.

The review team also determined, eight (8) non-error cases were 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 non-error cases with ineligible payments are being disallowed. Three non error cases were underpaid and are eligible for Federal funding.

Case Summary

The following charts record the 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.

Non-error Cases with Ineligible Payments

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
#2	No safety check for foster family home provider [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 08/18/2008-9/30/2008	\$2,541.80 Maint \$1,094.00 Admin
#8	Foster family home not licensed. [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 03/28/2007-9/28/2007	\$15,418.67 Maint \$ 7,604.00 Admin
	No safety check for foster family home provider [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 09/28/2007-07/31/2008	
#12	No safety check for foster family home provider [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 05/19/2009-10/31/2009	\$10,597.84 Maint \$ 3,958.00 Admin
#16	No safety check for foster family home provider [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 12/12/2007-12/31/2007	\$1,728.86 Maint \$ 486.00 Admin
#23	Foster family home not licensed. [§472(b) and (c). 45 CFR §§1356.71(d)(1)(iv). 1355.20] Ineligible: 08/01/2009-09/30/2009	\$1,636.80 Maint \$ 765.00 Admin
	No safety check for foster family home provider [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 08/01/2009-08/30/2009	
#41	Foster family home not licensed. [§472(b) and (c). 45 CFR §§1356.71(d)(1)(iv). 1355.20] Ineligible: 03/06/2009-05/31/2009	\$4,432.65 Maint \$2,171.00 Admin
#48	Judicial determination of reasonable efforts to finalize permanency plan not timely [§472(a)(2)(A)(ii); 45 CFR §1356.21(b)(2)] Ineligible: 01/01/2008-01/31/2008; 09/01/2008-09/30/2008	\$4,094.31 Maint \$1,507.00 Admin
#72	Foster family home not licensed. [§472(b) and (c). 45 CFR §§1356.71(d)(1)(iv). 1355.20] Ineligible: 09/16/2006-09/16/2006	\$300.00 Maint \$ 23.00 Admin
	Improper Payments Total:	\$40,750.93 Maint \$17,608.00 Admin

Non Error Underpayments

Sample Number	Underpayments Reasons	Improper Payments (FFP)
#6	Foster home licensed. [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Eligible: 04/26/2011-05/04/2011; 05/05/2011-05/12/2011; 05/13/2011-6/30/2011	\$1,961.74 Maint \$1,716.00 Admin
#11	Foster home licensed. [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Eligible: 02/17/2010-02/28/2010	\$772.60 Maint \$333.80 Admin
#72	Foster home licensed. [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Eligible: 07/01/2007- 04/30/2008	\$19,127.26 Maint \$ 7,415.00 Admin
	Underpayments	Total: \$21,861.00 Maint \$ 9,464.00 Admin

Areas in Need of Improvement

The findings of this review indicate the State needs to further develop and implement practices and procedures to improve the Title IVE 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: Placement in a Licensed Facility. In non error case samples #8, #23, #41, and #72 ineligible title IVE payments were made prior to the foster care homes obtaining full licensure or approval.

Title IV-E Requirement. For the child to be eligible, the child must be placed in a facility that is licensed and meets all of the State agency standards of full licensure or approval. The documentation of full licensure can be satisfied by the certificate of licensure/approval or a letter of approval. Effective September 28, 2000, full licensure must be met by all providers, including those licensed or approved by a child placing agency. The license must show that the foster family home or child care institution is licensed for the duration of the child's placement. The State may not claim title IV-E maintenance payments on behalf of a child prior to the full licensure of the foster care placement for the child. [§ 472(b) and (c); 45 CFR §§ 1356.71(d)(1)(iv).1355.20].

Recommended Corrective Action. The OCFS should continue to ensure that staff are fully trained and understand that all state licensing criteria must be met prior to claiming title IVE maintenance payments on behalf of a child place in the foster care setting.

Issue #2: Safety Requirements of Provider. In non error case samples #2, #8, # 12, #16, and # 23 ineligible payments were made prior to completion of safety checks.

Title IV-E Requirement. To ensure that a child is not placed in a foster care setting where the potential caregiver has caused or is likely to cause harm to a child, the State is required to examine the potential safety risk posed to the child by a foster care provider. The State agency must document for title IV-E requirements that the foster care provider meets the established safety standards before for the period that the title IV-E foster care maintenance payment are claimed for the child placed with the foster care provider. [§472(b) and (c). 45 CFR §§1356.71(d)(1)(iv). 1355.20].

Recommended Corrective Action: The OCFS should continue with their statewide improvement efforts to ensure that all staff statewide are trained and understand the Federal requirements.

Issue #3: Underpayments. There were three cases that in each case it was document that the child had met all criteria for eligibility under title IV-E. However, the State did not claim maintenance payments for the maximum amount of time that it could have claimed for each child.

Title IV-E Requirement: Federal regulation at 45 CFR §1356.60 provide that title IV-E foster care maintenance payments may be claimed for allowable cost 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 generally 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 paced 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: The NYS OCFS 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 payment for ineligible children or unallowable program costs. Also, it would help to reduce or 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 process of the title IV-E foster care eligibility program were observed during the review. These approaches may have led to improved program performance.

Court Orders: The CB recognized the collaborative efforts between OCFS and the State Office of Court Administration to standardize and enhance the quality and timeliness of court orders issued on foster care cases. Most of the orders contained detailed, child-specific information and clear enunciation of judicial expectations for actions to achieve the desired permanency outcome. Some permanency hearing reports contained case specific services provided to children and their parents. We also noted some court orders addressed Indian Child Welfare Act requirements for children's affiliation to Native American or tribal groups. NYS OCFS and the Office of Court Administration have participated in cross systems training to provide an understanding to its state and court personnel on the identifying children of Native American heritage who are placed in foster care as well as the importance and the process of contacting Native American tribes and Nation to inform them when children come into foster care. The continued focus of encouraging

all jurisdictions to utilize the standardized court orders statewide as a guide for court personnel is minimizing the omission of pertinent information

Permanency Hearings. The New York State Permanency legislation continues to have an impact on the improved timeliness of judicial determinations of reasonable efforts to finalize the permanency plan. The New York State law requires permanency hearings every six months, which has increased the timeliness of judicial determinations to finalize permanency. It is our hope that these efforts will strengthen the State's ability to achieve better permanency outcomes for children in foster care.

Relative Caregivers. NYS OCFS policy and practice is to place children who cannot remain in their home with relative caregivers. We are seeing the use of relative caregivers and children placed in lower levels of care, such as family foster homes instead of more restrictive congregate care. The exploration of guardianship with relatives can assist many children in the achievement of permanency goals and stable placements with family members. OCFS should continue the statewide efforts to promote use the Federal title IV-E Guardianship Assistance Program (GAP) for relatives who are reluctant to adopt family members.

Areas of Concern:

Case Documentation. OCFS provided the full case records which allowed the review process to be completed onsite and provided for a comprehensive review and on-site technical assistance. In some cases the documentation in the Family Assessment and Service Plans (FASP) were case specific and detailed. However, in one case documentation was missing from the case record. In some instances, there also was "cutting and pasting" of case documentation in FASPs and the licensing re-certification noting change only in the dates. The "cutting and pasting" led to non-descriptive, outdated information in a format that was repeated throughout the periods of case recordings.

Timely and current documentation is the "lifeline" and one essential product in a child's case. Documenting case activity is one of the many important tasks and responsibilities performed by child welfare staff. Case documentation is vital, should be accurate, and available in order to support all decisions such as the safety checks, licensing and reasonable efforts that affect outcomes for children.

Case documentation tells the story of every child and his or her family. Every child experiences milestones during the life of his or her case such as celebrating another year of life (a birthday), they growing an inch, or challenges from being in out of home care. Although "cutting and pasting" is viewed as an efficient and effective case management tool, good casework practice should provide an accurate picture of the child at the point in time the documentation is submitted. Caution is needed to minimize the rote use of the tool in order to ensure that case notes reflect the quality efforts made by casework staff as they work diligently on behalf of each child and his or her family.

Disallowances

A disallowance in the amount of \$40,753.93 in maintenance payments and \$17,608.00 in related administrative costs of Federal Financial Participation (FFP) is assessed for title IV-E foster care payments claimed for the non error cases. The State also must identify and repay any ineligible

payments that occurred for the 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 your efforts to improve the Foster Care Eligibility Program, the CB recommends that OCFS continue its efforts to strengthen the program statewide through the ongoing collaboration and training efforts with staff and external stakeholder that are crucial to an efficient and effective state child welfare program. The regional staff will be available to work with you and your staff.