

**State of Oklahoma
Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for
April 1, 2009 through September 30, 2009**

Introduction

During the week of January 25, 2010, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of the State's title IV-E foster care program. The review was conducted in collaboration with the Oklahoma Department of Human Services (OKDHS) and was completed by a review team comprised of representatives from OKDHS, CB Central and Regional Offices, ACF Regional Office of Grants Management and two peer reviewers.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether the Oklahoma Department of Human Services 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 6-month period under review (PUR) of April 1, 2009 through September 30, 2009. A computerized statistical sample of 100 cases (80 cases plus 20 oversample cases) was drawn from State data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. Eighty (80) cases were reviewed which included seventy four (74) from the initial sample. Six (6) oversample cases were reviewed as six (6) sample cases were excluded because no title IV-E payments were made 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 according to 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 childcare institution as defined in §472 (b) and (c) of the Act and 45 CFR §1355.20(a); and
- Safety requirements for the child’s foster care placement as required at 45 CFR §1356.30.

The case file of each child in the selected sample was reviewed to verify title IV-E eligibility. The foster care provider’s file also was examined to ensure the foster family home or childcare institution where the child was placed during the PUR was licensed or approved and that safety requirements were appropriately documented. Payments made on behalf of each child were reviewed to verify that the expenditures were allowable under title IV-E and to identify underpayments that were eligible for additional 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 title IV-E maintenance costs were not claimed by the State for an eligible child during the two-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 all of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. However, four (4) 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 associated with the non-error case with ineligible payments are being disallowed.

In addition, two (2) non-error cases were identified to have periods of eligibility for which the State did not claim allowable title IV-E maintenance payments. In accordance with Federal regulations at 45 CFR §95.7, OKDHS may claim the eligible payments by filing an increasing adjustment on its quarterly report of expenditures (form ACF-IV-E-1) in the next quarter, but no later than two years after the calendar quarter in which the State made the expenditure. Because the number of cases in error is fewer than four (4), the Oklahoma Department of Human Services is found to be in substantial compliance for the PUR.

Case Summary

The following chart records the non-error cases with ineligible payment; the 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)
OK #5	Foster care maintenance payment made for two providers for the same period. [§475(4) of the Act; 45 CFR §1356.60(a)(i)] Ineligible period: 03/31/2006	\$15 Maint.
OK #42	Foster care maintenance payment made for two providers for the same period. [§475(4) of the Act; 45 CFR §1356.60(a)(i)] Ineligible period: 02/23/2009	\$87 Maint.
OK #60	Foster care maintenance payment made for two providers for the same period. [§475(4) of the Act; 45 CFR §1356.60(a)(i)] Ineligible period: 01/31/07 and 03/07/2007	\$86 Maint.
OK #65	Foster care maintenance payment made for two providers for the same period. [§475(4) of the Act; 45 CFR §1356.60(a)(i)] Ineligible period: 07/31/07	\$14 Maint.

Total: \$202 Maint.

Underpayment Cases

Sample Number	Improper Payment Reason	Improper Payments (FFP)
OK #44	The judicial finding of reasonable efforts to finalize the permanency plan was not timely; however, the State stopped claiming title IV-E maintenance costs one month prior to the ineligible period. [§472(a) of the Act; 45 CFR §1356.21] Eligible period: 05/01/2008 – 05/31/2008	\$334 Maint.
OK #45	Child was in foster home and the foster parents were not paid for the initial 4 days of placement. [§472(a) of the Act; 45 CFR §1356.21] Eligible period: 08/28/2008 – 08/31/2008	\$33 Maint.

Total: \$367 Maint.

Strengths and Promising Practices

The following positive practices and processes of the OKDHS title IV-E foster care eligibility program were observed during the review.

Eligibility Unit: The utilization of specialized eligibility staff or “custody specialists” to complete the title IV-E eligibility determination process is an asset to OKDHS. The knowledge and expertise of these staff were evident during the review. The dedication of specialized staff resources to the program reduces the possibility of ineligible or erroneous title IV-E foster care maintenance payments.

Monitoring Reviews for Child Care Institutions: Frequent and thorough monitoring reviews of childcare institutions ensured that safety considerations were addressed for child care staff. The monitoring reviews included a thorough check of the employment date of staff cross-referenced with the date of the completed criminal background and child abuse/neglect history checks. Current OKDHS policy requires the completed criminal background and child abuse/neglect history checks be completed before staff has direct contact with children in these institutions. The monitoring reviews occurred three times a year as required by OKDHS policy.

Areas in Need of Improvement

The findings of this review indicate the State needs to improve program performance in the following areas. Though there were no error cases in this review, the issues below could have an impact on future reviews.

Issue #1: Court orders. The requirement for a judicial determination of whether the State made reasonable efforts to finalize the permanency plan as required by 45 CFR §1356.21(b)(2) of the Act was met in the 80 cases reviewed. However, the review team raised concerns about the court orders, titled “Journal Entry,” used by the Oklahoma County court. Oklahoma County is the largest county in the State and 38 of the 80 cases in the review were impacted by the concerns. The court orders in these cases consisted of several checked boxes and entries in the same order for a child regarding “reasonable efforts to finalize the permanency plan” that appeared contradictory. For example, a box was checked to indicate reasonable efforts were no longer required; another box was checked to indicate reasonable efforts had not been made; and at the end of the order the judge included a handwritten statement that ruled reasonable efforts had been made, included the permanency goal, and whether the treatment plan was adopted or services were continued. The box on the form that documented reasonable efforts to finalize the permanency plan were made, however, was not checked. Without the handwritten information in the narrative section, the orders would not have clearly documented required judicial determinations regarding the agency’s efforts to finalize a permanency plan which could have resulted in several error cases. After further discussion with the State, it was determined the Oklahoma County court used the checkboxes to enter a decision about the parents’ efforts to complete services and comply with the plan for family reunification instead of the agency’s (OKDHS) efforts to finalize the permanency plan for the child.

The “Journal Entry” in the Oklahoma County cases also was used as a “catch-all” court document that combined findings from several different hearings, such as adjudication, termination of parental rights, periodic reviews, and permanency hearings. This practice impacts the quality of each hearing that determines a child’s permanency outcomes. While the hearings determining the judicial findings were timely, they, and the resultant court orders, lack quality, specificity, and substantive information regarding permanency needs of families and children. In

contrast, the court orders from cases in the other counties included clear and explicit judicial findings that directly related to the purpose of each court proceeding.

Recommendation: OKDHS and the Court Improvement Project (CIP) need to work with the Oklahoma County Courts to ensure that court orders include clear, explicit, and child-specific judicial findings in order to provide clarity as to the Court's intent at each hearing. The court orders should adequately reflect State criteria of legal sufficiency and judicial practice. For title IV-E purposes, the court orders should explicitly document compliance with Federal eligibility requirements.

Issue #2: Title IV-E State Plan Requirements; Foster Care Placement Provider Licensure/Approval Requirements; and Safety Requirements of Provider. Tribal Nations in Oklahoma actively utilize the Tribal/State title IV-E agreements available to them. Tribal foster care placements are frequently shared between Tribal custody and OKDHS custody children. It has come to our attention that OKDHS will not release child abuse and neglect information of a prospective or existing tribal foster family to Tribal officials that approve and monitor the home. It is also our understanding that there are concerns in the State that sharing of this information would expose the agency to liability from the potential foster family because Oklahoma does not have a "formal registry" and so, perpetrators against whom there are findings made are not provided due process regarding any released information. Although Federal statute at §471(a)(20)(B) of the Social Security Act, as amended by the Adam Walsh Child Protection and Safety Act of 2006, does not require States to maintain a central registry for their child abuse and neglect cases, most States do so because the registry is considered a vital tool in investigating, treating and preventing child victimization. Regardless of whether a central registry is maintained by Oklahoma, denying appropriate access to OKDHS child abuse cases has serious practice implications that place State and Tribal custody children at risk of harm in out-of-home placements. It is imperative for Tribes and requesting States to have accurate historical child abuse and neglect information in order for them to make informed placement decisions that directly impact the safety, permanency, and well-being of all children.

Recommendations: Since the onsite review, the OKDHS' legal division has indicated it is conducting research and working towards methods to facilitate information sharing. It is our understanding that this research has been ongoing for at least the past three years. We encourage the State to work expeditiously towards resolving this issue. We further recommend that the State review and revise its current statute, policy, and practice to allow sharing of child abuse and neglect history with the Tribes (and requesting States) for current and prospective foster care providers in order to ensure safety for all children in foster care. This also will help to improve safety, service array, placement stability, and permanency outcomes for all children and families in Oklahoma and nationwide, as well as improve collaboration and coordination efforts with the Tribal Nations in Oklahoma.

Disallowances

A disallowance in the amount of \$202 in maintenance payments is assessed for title IV-E foster care payments claimed improperly for the non-error cases. The total disallowance as a result of this review is \$202. Since the amount of disallowed funds was previously included in Federal

payments made to the State, Oklahoma must repay these funds by including a prior period decreasing adjustment on the quarterly report of expenditures (form ACF-IV-E-1), Part 1, Line 1, Columns (c) and (d). Form ACF-IV-E-1 must be submitted within 30 days of the date of this letter in order to avoid the assessment of interest.

Next Steps

The Children's Bureau Region VI staff will continue to monitor the issues identified through the title IV-B and IV-E State plans and the Court Improvement Project. We will also remain available to provide technical assistance as requested by the State.