

**State of Tennessee
Secondary Review
Title IV-E Foster Care Eligibility
Report of Findings for
October 1, 2011 – March 31, 2012**

Introduction

During the week of July 23, 2012, the Children’s Bureau (CB) of the Administration for Children and Families (ACF) conducted a secondary review of the State’s title IV-E foster care program. The review was conducted in collaboration with the State of Tennessee’s Department of Children’s Services (DCS) and was completed by a review team comprised of representatives from the State agency, CB Central and Regional Offices, ACF Regional Grants Management, and peer reviewers.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether the Tennessee Department of Children’s 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.

This secondary review was conducted because of the findings of the primary review that was completed during the week of June 8, 2009. At that time, Tennessee DCS was determined not to be in substantial compliance with title IV-E eligibility requirements for the period under review April 1, 2008-September 30, 2008. As required, the State submitted a Program Improvement Plan (PIP) to correct the areas found deficient in its eligibility program for foster care. CB’s approval of the PIP was based on the State’s reports of progress and planned improvements. In particular, the State’s PIP focused on issues involving court orders and on assuring that applicable safety requirements for children placed in childcare institutions were documented as met.

Scope of the Review

The secondary 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 October 1, 2011 – March 31, 2012. A computerized statistical sample of 180 cases (150 cases plus 30 over sample cases) was drawn from State data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. One hundred and fifty (150) cases were reviewed including one hundred and forty-three (143) from the original sample and seven (7) cases from the over-sample. Cases were excluded from the original sample because in four (4) of the cases the child was on a trial home visit and no payments were made; two (2) payments were adjusted prior to the sample pull and in one case (1) the child was over 18 and should not have been included in this sample. None of these cases received title IV-E foster care maintenance payments during the PUR. The State provided documentation to support excluding these cases from the review sample and replacing them with cases from the over-sample.

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.

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 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 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 associated unallowable cost. In addition, underpayments were identified for a sample case when title IV-E maintenance payment was 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 141 of the 150 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Nine (9) cases were determined to be in error for either part or all of the PUR. Seven (7) additional non-error cases were ineligible for Federal funding for a period of claiming. In addition, seven (7) non-error cases were identified to have periods of eligibility for which the State did not claim allowable title IV-E maintenance payments (underpayments). These data indicate that Tennessee's case error rate of 6 percent is less than 10 percent. Therefore, Tennessee is considered to be in substantial compliance.

The 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. In accordance with Federal regulations at 45 CFR §95.7, the State may claim the eligible payments for the non-error underpayment cases by filing an increasing

adjustment on its Title IV-E Programs Quarterly Financial Report(Form CB-496) in the next quarter, if the claim for the expenditure falls within two years after the end of the calendar quarter within which the State made the expenditure.

Case Summary

The following charts record the error cases; 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 (FMAP) for the applicable years(s) for each sample case.

Error Cases

| Sample Number | Improper Payment Reason & Ineligibility Period | Maintenance Payments (FFP) | Administrative Costs (FFP) |
|----------------------|--|-----------------------------------|-----------------------------------|
| TN-02 | Child was not living with and removed from a specified relative. [§472(a)(3) of the Act; 45 CFR §1356.21(k)&(l) and 1356.71(d)(1)(v)] Ineligible: 12/08/11-04/01/2012 (Entire Episode) Financial need was not established for AFDC eligibility. [§472(a)(3) of the Act; 45 CFR §1356.21(l) and 1356.71(d)(1)(v)] Ineligible: 12/08/11-04/01/2012 (Entire Episode) | \$2,938 | \$413 |
| TN-12 | State claimed IV-E funds prior to judicial determination of contrary to the welfare requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(c)] State claimed IV-E funds prior to judicial determination of reasonable efforts to prevent removal requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(b)(1)] Title IV-E funds were claimed when the agency did not have placement and care responsibility. [§472(a)(2)(B); 45 CFR §1356.71(d)(1)(iii)] Ineligible: 11/23/2011-11/30/11 | \$145 | 0 |

| Sample Number | Improper Payment Reason & Ineligibility Period | Maintenance Payments (FFP) | Administrative Costs (FFP) |
|----------------------|---|-----------------------------------|-----------------------------------|
| TN-105 | State claimed IV-E funds prior to judicial determination of contrary to the welfare requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(c)] State claimed IV-E funds prior to judicial determination of reasonable efforts to prevent removal requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(b)(1)] Ineligible: 11/30/2011-11/30/2011 | \$15 | 0 |
| TN-106 | Judicial determination of contrary to the welfare was not attained. [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(c)] Ineligible: 02/15/2011-05/31/2012 (Entire Episode) | \$8,563 | \$1,626 |
| TN-108 | Financial need was not established for AFDC eligibility. [§472(a)(3) of the Act; 45 CFR 1356.71(d)(1)(v)] Ineligible: 02/19/2012-02/29/12 | \$465 | \$100 |
| TN-109 | Judicial determination of reasonable efforts to finalize the permanency plan was not timely [§472(a)(2)(A) of the Act; 45 CFR §1356.21(b)(2)] Ineligible: 12/12/2011-12/31/2011 | \$512 | \$100 |
| TN-116 | Judicial determination of reasonable efforts to prevent removal was not attained. [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(b)(1)] Ineligible: 05/04/2009-03/31/2012 (Entire Episode) | \$42,724 | \$3,363 |
| TN-136 | State claimed IV-E funds prior to judicial determination of contrary to the welfare requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(c)] State claimed IV-E funds prior to judicial determination of reasonable efforts to prevent removal requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(b)(1)] Ineligible: 01/30/2012- 01/31/2012 | \$31 | 0 |

| Sample Number | Improper Payment Reason & Ineligibility Period | Maintenance Payments (FFP) | Administrative Costs (FFP) |
|----------------------|--|-----------------------------------|-----------------------------------|
| TN-146 | Judicial determination of reasonable efforts to finalize the permanency plan was not timely. [§472(a)(2)(A) of the Act; 45 CFR §1356.21(b)(2)] Ineligible: 12/12/2011-12/31/2011 | \$338 | 100 |
| | Total | \$55,731 | \$5,701 |

Non-error Cases with Ineligible Payments

| Sample Number | Improper Payment Reason & Ineligibility Period | Maintenance Payments (FFP) | Administrative Costs (FFP) |
|----------------------|---|-----------------------------------|-----------------------------------|
| TN-10 | State claimed IV-E funds prior to judicial determination of contrary to the welfare requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(c)] State claimed IV-E funds prior to judicial determination of reasonable efforts to prevent removal requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(b)(1)] Ineligible: 01/30/2011- 01/31/2011 | \$32 | 0 |
| TN-44 | State claimed IV-E funds prior to judicial determination of contrary to the welfare requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(c)] State claimed IV-E funds prior to judicial determination of reasonable efforts to prevent removal requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(b)(1)] Ineligible: 06/30/2011- 06/30/2011 | \$26 | 0 |

| Sample Number | Improper Payment Reason & Ineligibility Period | Maintenance Payments (FFP) | Administrative Costs (FFP) |
|----------------------|---|-----------------------------------|-----------------------------------|
| TN-56 | State claimed IV-E funds prior to judicial determination of contrary to the welfare requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(c)] State claimed IV-E funds prior to judicial determination of reasonable efforts to prevent removal requirement being met . [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(b)(1)] Ineligible: 10/29/2010-10/29/2010 | \$18 | 0 |
| TN-60 | State claimed IV-E funds prior to judicial determination of contrary to the welfare requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(c)] State claimed IV-E funds prior to judicial determination of reasonable efforts to prevent removal requirement being met . [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(b)(1)] Ineligible: 04/29/2010- 04/30/2010 | \$70 | 0 |
| TN-66 | State claimed IV-E funds prior to judicial determination of contrary to the welfare requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(c)] State claimed IV-E funds prior to judicial determination of reasonable efforts to prevent removal requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(b)(1)] Ineligible: 01/30/2011- 01/31/2011 | \$32 | 0 |
| TN-88 | State claimed IV-E funds prior to judicial determination of contrary to the welfare requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(c)] State claimed IV-E funds prior to judicial determination of reasonable efforts to prevent removal requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(b)(1)] Ineligible: 10/29/2010-10/31/2010 | \$50 | 0 |

| Sample Number | Improper Payment Reason & Ineligibility Period | Maintenance Payments (FFP) | Administrative Costs (FFP) |
|---------------|---|----------------------------|----------------------------|
| TN-113 | State claimed IV-E funds prior to judicial determination of contrary to the welfare requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(c)] State claimed IV-E funds prior to judicial determination of reasonable efforts to prevent removal requirement being met [§472(a)(2)(a)(ii) of the Act; 45 CFR §1356.21(b)(1)] Ineligible: 03/28/2011- 03/31/2011 | \$170 | 0 |
| | Total | \$399 | 0 |

Areas in Need of Improvement

The findings of this review indicate that the State 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 – Judicial Finding of Contrary to the Welfare – Removal from the Home – In six (6) of the error cases and seven (7) of the non-error cases with ineligible payments the judicial determinations of contrary to the welfare and reasonable efforts to prevent removal were obtained in the month after the children had been removed from the home. The physical removal from the home did not coincide with the judicial ruling of contrary to the welfare and reasonable efforts to prevent removal. In one case, the judicial order was obtained twelve (12) days after the child was removed from the home. In most cases this occurred at the end of the month when the month ended on the weekend.

Title IV-E Requirement: The title IV-E statutes at §472(a)(2)(A) of the Act, as a prerequisite for Federal reimbursement on behalf of an otherwise eligible child, require that the child’s physical or constructive removal be in accordance with either 1) a judicial determination to the effect that continuation in the home from which judicially removed would be contrary to the welfare of the child and that reasonable efforts to prevent the removal were made; or 2) a voluntary placement agreement entered into with the title IV-E agency by a parent or legal guardian of the child, Federal financial participation (FFP) may not begin until the first day of the month in which initial eligibility requirements are satisfied such as contrary to the welfare and reasonable efforts to prevent removal judicial determinations. If title IV-E funds were claimed before the month in which the requisite judicial determination was made, this results in ineligible title IV-E payments.

Recommended Corrective Action: The State should continue to work closely with the Court Improvement Program to implement procedures that ensure all initial court removal orders are obtained and eligibility requirements met prior to IV-E claims being made. In addition, procedures should be developed to ensure the eligibility specialists do not approve eligibility for

the title IV-E program until the month in which the judicial requirements of contrary to the welfare and reasonable efforts to prevent removal are met for an otherwise eligible child.

Issue #2- Judicial Determination of Reasonable Efforts to Finalize a Permanency Plan -

Two (2) cases were found to be in error because the judicial finding of reasonable efforts to finalize the permanency plan was not met. In these cases in which the finding was not made, there were continuances in the court hearings. Most of the court orders from the permanency review hearing included an explicit reasonable efforts finding and a detailed description of the efforts that were made. Some court orders, however, did not include any information on the efforts made by the agency to finalize a child's permanency plan.

Title IV-E Requirement: Federal provisions at §472(a)(2)(A) of the Act and 45 CFR §1356.21(b)(2) require the State to obtain a judicial determination of whether the State made reasonable efforts to finalize a permanency plan for the child. The judicial finding must occur at regular 12-month intervals for the duration of the foster care episode and no later than 12 months from the month in which the prior determination is obtained. If the judicial determination of reasonable efforts to finalize the permanency plan is not made or is not timely, the child becomes ineligible from the beginning of the first day of the month after it is due and remains ineligible until the first day of the month in which the judicial determination is made.

Recommended Corrective Action: To address the identified delays in permanency hearings in which the judicial findings are made and the lack of determinations required under title IV-E in court orders, it is recommended that TN DCS and the Administrative Office of the Courts (AOC) work collaboratively to further improve operational results. These efforts could consist of quarterly reports, by county, that provide information such as: court orders that do not contain the required findings; delays in permanency hearings that create untimely judicial findings; and court continuances that significantly delay decisions about achieving placement stability and permanency for a child. The requisite judicial determination need not be tied to a permanency or other court hearing. The judicial determination may be rendered by the court at any point during the 12-month period. The State should continue to develop and implement procedures to ensure timely judicial determinations of reasonable efforts to finalize the permanency plan regardless of the timing of the permanency hearing. In addition, procedures should be developed to ensure the eligibility specialists do not approve eligibility for the title IV-E program until the judicial requirements of reasonable efforts to finalize the permanency plan is met for an otherwise eligible child.

Issue #3: Title IV-E Requirements Related to AFDC -

In two (2) error cases, title IV-E payments were made improperly because AFDC eligibility was not correctly determined.

Living With/Removal From Specified Relative: In one (1) of the error cases, TN-02, the child was not living with and removed from a specified relative. In other cases determined not to be errors or improperly paid, the child had been living with an interim caretaker or relative and the court orders did not consistently identify the home from whom the child was being removed. This made the process for determining AFDC more challenging, and may have led to cases in which the agency did not consistently use the correct removal home for determining AFDC. Including this information in the text of the removal order would facilitate more accurate AFDC eligibility determinations. The agency should have taken extra steps, such as checking the court and agency's records, to verify the removal home before making its decision about eligibility.

Title IV-E Requirement: Consistent with §472(a)(2)(A) & (a)(3) of the Act, the child must have been physically or constructively removed from the home of a specified relative according to a court order or Voluntary Placement Agreement (VPA) and must have lived with that same specified relative within six months of removal according to the VPA or a judicial finding of contrary to the welfare. Federal statute at §§472(a)(1) and (4) of the Act and regulations at 45 CFR §1356.71(d)(1)(v) require the child to have lived with and be removed from the same specified relative. Further, the State agency must establish that the child is financially needy using criteria in effect as of July 16, 1996 in the State's title IV-A plan. The AFDC determination must be based upon the circumstances of the home of the specified relative from whom the child was removed.

Recommended Corrective Action: Additional training for eligibility staff related to making AFDC determinations in accordance with the State's 1996 AFDC plan. In addition, particular attention should be focused on ensuring that staff understand the "living with and removal from" requirements and the linkage to determining the AFDC removal home for title IV-E eligibility. The State should also enhance training around determination of financial need. The State should continue to work closely with the AOC to ensure the court's findings regarding the removal home are clearly stated in the court orders and that the Uniform Petition and Orders developed following the 2009 primary review are used as an instructional tool consistently across all jurisdictions.

Underpayments

The review determined that seven (7) cases contained underpayments. An underpayment is considered to have occurred when a title IV-E payment is not claimed, but could have been claimed for an allowable title IV-E activity or period of eligibility. ACF could not immediately identify the underpayment amounts for the cited cases because these cases were pulled from the old legacy system and were not readily available. The State is requested to report these amounts to ACF so that we may obtain a complete record of the total payments identified as part of this review. In 6 of the cases, the key reason for the underpayment is that license approval or recertification was not entered into the system in a timely manner and as a result the system indicates that the child is not eligible for title IV-E. This is a system programming safeguard that is in place to prevent overpayments.

Recommendation for Improvement: The State should make efforts to encourage workers to provide timely data entry of initial approval of licenses. In addition, there should be collaboration between the Child Welfare Benefit and fiscal staff to develop procedures to prevent payment delays when homes are initially licensed. The State is reminded that appropriate, more timely documentation of licensing will result in the availability of additional Federal funding.

Program Strengths & Promising Practices

Improvements in the State's title IV-E foster care eligibility program were noted during this review. The following positive practices and processes have led to improved program performance and successful program operations:

- Court orders were generally well-written and child-specific. Most orders provided detailed descriptions of services and efforts made to prevent removal or to finalize

permanency. In addition, most of the judicial determinations to finalize permanency were not timely. In most cases, when judicial determinations to finalize a permanency plan were timely, through collaborative efforts between the Child Welfare Benefit, legal and fiscal staff, title IV-E funds were either not claimed or backed out timely.

- The State agency has worked with the Court Improvement Project (CIP) as well as judges and attorneys to refine court orders. The CIP and DCS have developed Uniform Petition and Orders to use for various types of hearings. In addition, they have provided training to judges, county attorneys, county caseworkers and supervisors. The DCS office also worked with judges in the State reviewing draft orders to determine if they contain the appropriate language but allow for explicit, child specific determinations for “contrary to the welfare” and “reasonable efforts”. Through these efforts, the written orders issued by the court following a ruling have improved since the last review. As mentioned previously, work should continue to ensure judicial findings are timely and the court orders clearly reflect the court rulings regarding the home from which the child is being removed.
- Criminal background checks for foster parents and institutions were found to have been completed prior to the child’s placement in most of the cases. This serves to protect the safety of children while in foster care while complying with the Federal requirements. As part of the State’s PIP from the 2009 primary review, Tennessee developed quality assurance measures and tracking procedures to ensure that approved foster family homes and licensed facilities are in compliance with Federal policy regarding safety checks for employees and foster parents. A new process for licensing approval and documenting safety requirements for institutions was effective October 1, 2011. The new procedure now requires signatures and dates on the checklist. Since the implementation date was at the beginning of the PUR, we did not see the impact of this change in the sampled cases.

Disallowances

A disallowance in the amount of \$55,731 in maintenance payments and \$5,701 in related administrative costs of Federal Financial Participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases. An additional amount of \$399 in maintenance payments is 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 \$61,831 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

CB recommends the State look at the areas of concerns identified in this report and undertake any necessary corrective measures. The Region IV program staff will continue to work with the State to provide technical assistance in addressing the issues and concerns raised during this review.