

**State of Texas**  
**Primary Review**  
**Title IV-E Foster Care Eligibility**  
**Report of Findings for**  
**October 1, 2008 – March 31, 2009**

**Introduction**

During the week of July 13, 2009, 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 State of Texas Department of Family and Protective Services and was completed by a review team comprised of representatives from the Texas Department of Family and Protective Services, Texas Juvenile Probation Commission, Texas Youth Commission, CB Central and Regional Offices, ACF Regional Office of Grants Management and one peer reviewer.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether the Texas Department of Family and Protective 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 October 1, 2008 through March 31, 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, all from the original sample.

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 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 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 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 80 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Zero (0) cases were determined in error for either part or all of the PUR. However, one (1) non-error case was ineligible for Federal funding for a period of claiming. Federal funds claimed for title IV-E foster care maintenance payments associated with the non-error case are being disallowed. In addition, four (4) 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), the Texas Department of Family and Protective Services is in substantial compliance for the PUR.

### **Case Summary**

The following charts record the non-error cases with either ineligible payments or underpayments, the reasons for the improper payments, and Federal provisions for which the State did not meet the compliance mandates.

**Non-error Cases with Ineligible Payments**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments (FFP)</b>
TX 70	Foster care maintenance payments made for two providers for same period. [§475(4) of the Act; 45 CFR 1356.60(a)(i)] Ineligible: 08/01/2006-08/08/2006	\$99 Maint. \$0 Admin.

Total: \$99.00

**Underpayment Cases**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments (FFP)</b>
TX - 08	Child was in foster home directly from the hospital and the foster parents were not paid for initial 4 days of placement in the foster family home. [§472(a) of the Act; 45 CFR 1356.21] Eligible: 02/25/2009-02/28/2009	\$65 Maint.
TX - 10	Child was in foster home directly from the hospital and the foster parents were not paid for the initial 24 days of placement in the foster family home. [§472(a) of the Act; 45 CFR 1356.21] Eligible: 12/08/2008-12/31/2008	\$393 Maint.
TX - 33	Child was in foster home directly from the hospital and the foster parents were not paid for the initial 7 days of placement in the foster family home. [§472(a) of the Act; 45 CFR 1356.21] Eligible: 07/25/2008-07/31/2008	\$115 Maint.
TX - 37	Child was in foster home directly from the hospital and the foster parents were not paid for the initial 3 days of placement in the foster family home. [§472(a) of the Act; 45 CFR 1356.21] Eligible: 08/29/2008-08/31/2008	\$49 Maint.

Total: \$622.00

## Strengths

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 excellent program performance and successful program operations.

**Staff and Supervisors:** The staff and supervisors of the eligibility units are experienced and conscientious professionals.

**Information Management Protecting Adults and Children in Texas (IMPACT) and Child Care Licensing Automated Support System (CLASS) Systems:** Texas has a very good SACWIS system. Additionally, title IV-E eligibility staff have access to the Office of Attorney General (OAG) system, Texas Integrated Eligibility Redesign System (TIER), Systems of Application, Verification, Eligibility, Referral and Reporting (SAVERR), and Supplemental Security Income (SSI) screens, all of which provide additional information and support to assist the eligibility staff in making timely and accurate determinations of eligibility.

**Court Documentation:** The affidavits that case workers provided to the court in support of the Agency's requests for judicial authority pertaining to removals are thorough and help eligibility specialists to establish deprivation, employment, living circumstances, and resources needed for eligibility determination. Judicial determinations of "contrary to the welfare" and "reasonable efforts to prevent removal" were timely and consistently found in the initial court orders.

## Areas in Need of Improvement

The findings of this review indicate the State needs to further develop and implement procedures to improve program performance in the following areas.

Issue # 1: Underpayments. Infants who enter a foster care placement directly from a hospital generally are covered under the Medicaid Assistance Only (MAO) eligibility program. This funding source automatically continues for a period after the child is placed in foster care. The conversion to title IV-E funding for an eligible child cannot begin until sometime after the foster care placement, usually the month after placement. State staff said they do not know the cause of this problem but think this may be the result of a system programming error. This technicality also prevents State staff from manually correcting the funding code in these cases.

Recommended Corrective Action: The State should review its payment systems to identify and resolve the cause of this error as well as develop system capacity that will permit retroactive claiming. Until the problem is rectified, it is possible the State will continue to lose significant title IV-E dollars.

Issue # 2: Income Eligibility Determination. The Eligibility Determination worksheet is not clear as to the month for which the determination is made. There is a place to record the date of court orders, but no place on the form to record a date that clearly specifies that the income and resources considered were for the month of removal. Having a place on this worksheet for the month that the determination is made would provide greater clarity about the eligibility decision points.

It also is not clearly documented that verification of income and resources routinely occurs. It was observed that “self-report” by the child’s parent or caregiver was deemed acceptable. For most cases reviewed, the family was reported to have no income, but the case notes often reflect that the family seems to be supported by friends or relatives. It is important that any instances of self-reporting of income and resources be screened and verified as part of the eligibility determination process, including those provided by extended family and friends.

Recommended Corrective Action: Eligibility specialists should acquire a better understanding of the State’s title IV-A plan in effect on July 16, 1996 as well as its AFDC rules concerning in-kind payments and income sources. Under certain conditions, financial contributions are considered countable income for the individual receiving the funds and for the individual’s family assistance unit. If a parent reports employment, primary verification sources such as tax records, pay stubs, or financial benefit statements should be obtained, whenever possible, to verify income and resources. In some situations, telephone calls or letters to employers may be necessary. These steps are important because even small differences in “estimated” earnings can impact the determination of title IV-E eligibility. It is also recommended that the State routinely review available income and eligibility verification systems when eligibility is determined regardless of whether primary verification sources are provided to the State. This will assist the State in ensuring correct eligibility determinations and improving data quality in information and verification systems.

Issue # 3: Court Orders. Although affidavits generally were child-specific and detailed, written court orders often were not. Some courts utilized template orders that included optional language such as “have/have not” or “did/did not,” and neither option was selected. The lack of specificity in court orders was identified in the 2006 foster care eligibility review as an area needing attention.

Recommended Corrective Action: In addition to conforming to the Federal regulatory timeframes, judicial determinations must be made on a case-by-case basis and explicitly stated in the court order. The State should continue to work through its court improvement project to increase awareness, for court personnel preparing the orders, of the importance of child-specific and explicit court orders. If checklists or other templates are used, space on the form can be included to address the basis of the court’s rulings. Although not required for title IV-E eligibility purposes, including in the court order the facts upon which the “contrary to the welfare” and “reasonable efforts” determinations are based significantly improves the quality of the court order.

Issue # 4: Living With/Removal From. Five (5) cases were reconstructed during the review in which the “living with and removal from” determinations were not referring to or made with respect to the same specified relative’s home. In these cases, the AFDC determination was incorrectly based on the home of the specified relative where the child lived during the removal month even though that was not the home from which the child was judicially removed and had lived at some point during the six months prior to the court-ordered removal.

Recommended Corrective Action: More training is needed to help eligibility specialists understand the “living with and removal from” requirements and their linkage to determining the

AFDC removal home for title IV-E eligibility. Consistent with §472(a)(2)(A) 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 and must have lived with that same specified relative within six months of removal. The AFDC determination, then, considers the home of the specified relative who is the basis of the “contrary to welfare” determination in a judicial removal or who signs the voluntary placement agreement. However, if more than six months had expired since the removal, then the “living with and removal from” requirement has not been met.

Issue # 5: Criminal Record Checks. The State reported that the phrase “No FBI record found” on some documentation provided by the State did not always mean that a record search was conducted or completed. The use of the cited text under these circumstances is misleading because it conveys compliance with the safety requirement when, in fact, it is possible no request for a check was submitted.

Recommended Corrective Action: The State must clearly and accurately substantiate compliance with the eligibility requirements. This may be accomplished by including on the documentation stating “No FBI record found” more descriptive information such as the submittal and receipt dates of the criminal record check, the results of the check itself, and the official conducting the check.

### **Disallowances**

A disallowance in the amount of \$99 in maintenance payments, only, is assessed for title IV-E foster care payments claimed for the one (1) non-error case. The State also must identify and repay any ineligible payments that occurred for the non-error case subsequent to the period of ineligibility indicated in this report. No future claims should be submitted on this case until it is determined that all eligibility requirements are met.

### **Next Steps**

The Children’s Bureau staff are and will remain available to provide any technical assistance necessary to make the improvements in the eligibility process recommended in this report.