

# **State of Texas Secondary Review Title IV-E Foster Care Eligibility**

## **Report of Findings for April 1, 2014 - September 30, 2014**

### **Introduction**

During the week of February 9, 2015, 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 Texas Department of Family and Protective Services (DFPS) and was completed by a review team comprised of representatives from DFPS, Texas Juvenile Justice Department (TJJD), CB Central and Regional Office, cross-state peer reviewers, and ACF Regional Grants Management Office. The review was conducted at a DFPS office located in Austin, Texas.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether the DFPS 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.

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- Updating policy and providing training on the AFDC income assistance unit as required by federal regulations (45 CFR 206.10(a)(1)(vii))
- Updating policy and providing training on the AFDC eligibility requirements regarding financial need and deprivation in accordance with §472(a)(3) of the Act and (45 CFR §1356.71(d)(1)(v))
- Updating policy and providing training on the AFDC home of removal based on the judicial finding as required by §472(a)(1) and (3) of the Act and 45 CFR §§1356.21 (k) and (l)
- Working with the Court Improvement Program to ensure judicial determinations are made on a case-by-basis, explicitly stated in the court order, and in conformity with regulatory timeframes as required under §472(a)(2)(A), and
- Improving quality assurance systems or automated verifications to ensure that the state is following its policy to complete safety checks of potential caregivers in foster homes and child-care institutions.

During the PIP implementation period, DFPS manually modified the foster care eligibility processes to incorporate the two-step income test to determine AFDC eligibility until the

State's Automated Child Welfare Information System (SACWIS) update could be completed. DFPS implemented a quality assurance review process to review a sample of eligibility determinations quarterly and completed a review of all open title IV-E cases to ensure accurate eligibility determinations based on the two-step income test requirements. The change to the SACWIS eligibility modules was implemented in November 2012. In addition, the state strengthened policies and practices as well as revised forms and procedures to support more accurate title IV- E eligibility determinations. As part of the automation and policy changes, DFPS eligibility staffs were trained on the AFDC eligibility requirements. The DFPS also worked with the foster care providers to monitor the completion of safety checks of potential caregivers in foster homes and child-care institutions, as well as ongoing safety checks of the caregivers as required by state policy and rules.

## **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 for a period during the six-month PUR of April 1, 2014 – September 30, 2014. A computerized statistical sample of 180 cases (150 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. One hundred fifty (150) cases were reviewed, which consisted of 142 cases from the original sample plus 8 oversample cases. Eight (8) cases were excluded from the original sample: three cases because no title IV-E maintenance payment was made for the PUR; and five cases because the child turned 18 years of age prior to the PUR or during the PUR. The state provided documentation to support excluding these cases from the review sample and replacing them with the 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)(I) 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)(I)(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)(I)(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.

Case file information for each child in the selected sample was reviewed to verify title IV-E eligibility. Information from the foster care provider's file also was examined to ensure the foster family home or child-care institution in which the child was placed during the PUR was licensed or approved and that safety considerations were appropriately addressed. Payments made on behalf of each child 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 activity date. The CB and the state agreed that, subsequent to the on-site review, the state would have two weeks to submit additional documentation for a case that during the onsite review was identified as in error, in undetermined status or had an ineligible payment. The DFPS did not submit any additional documentation for cases identified as in error or ineligible.

## **Compliance Finding**

The review team determined that 143 of the 150 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. There were seven (7) cases determined as in error for either part or all of the review period for the reasons that are identified below in the Case Record Summary section of the report. The seven (7) error cases resulted in a case error rate of 4.67 percent. The total dollar value of the maintenance payments and calculated associated administration in the review sample was \$888,075 federal financial participation (FFP) for the PUR of which \$100,818 FFP represents ineligible maintenance payments and associated administration for the 7 error cases. This resulted in a dollar error rate of 11.35 percent. These data indicate that DFPS dollar error rate of 11.35 percent is more than 10 percent and the case error rate of 4.67 percent is less than 10 percent.

Based on the review findings, the Children's Bureau has determined that the DFPS title IV-E foster care program is in substantial compliance with federal eligibility requirements for the PUR. Substantial compliance in a secondary review is achieved when either the case error rate or dollar error rate does not exceed 10 percent. The team did not identify in the review sample any underpayments costs that were eligible for payment under title IV-E. The next review, which will be a primary review, will be held within three years.

## **Case Record Summary**

The following charts record the error cases; non-error cases with ineligible payments; reasons for the improper payments; improper payment amounts; and federal provisions for which Texas DFPS did not meet the compliance mandates.

Error Cases

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
TX 11	Safety requirements were not completed satisfactorily for caregiver staff of an institution. 45 CFR §1356.30  Ineligible: 09/24/2014 - 10/03/2014	Maintenance \$ 644.18  Administrative \$ 0.00
TX 15	Removal from and living with requirements were not met by the same specified relative. [§472(a)(I), (2)(A)(ii) and (3) of the Act and 45 CFR §§ 233.90 and 1356.2l(k) & (l)]  Ineligible: Entire Foster Care Episode Reported Disallowance Period: 07/08/2014 - current	Maintenance \$ 10,138.47  Administrative \$ 3,224.00
TX 52	Removal from and living with requirements were not met by the same specified relative. [§472(a)(I), (2)(A)(ii) and (3) of the Act and 45 CFR §§ 233.90 and 1356.2l(k) & (l)]  Ineligible: Entire Foster Care Episode Reported Disallowance Period: 07/08/2014 - current	Maintenance \$ 10,138.47  Administrative \$ 3,224.00
TX 76	Financial need and deprivation of parental support or care were not established. [§472(a)(I) and (3) of the Act and 45CFR §§233.20, 233.90 and 1356.2l(k) & (l)]  Ineligible: Entire Foster Care Episode Reported Disallowance Period: 03/18/2014 - current	Maintenance \$ 6,463.46  Administrative \$ 6,447.00
TX 108	Removal from and living with requirements were not met by the same specified relative. [§472(a)(I), (2)(A)(ii) and (3) of the Act and 45 CFR §§ 233.90 and 1356.21(k) & (I)]  Ineligible: Entire Foster Care Episode Reported Disallowance Period: 02110/2014 - current  Requirements for placement and care not met. [§472(a)(2)(B)(i) and (ii) of the Act and 45 CFR §1356.71(d)(l)(iii)]  Ineligible: 02/10/2014 - 02/20/2014	Maintenance \$ 5,086.93  Administrative \$ 7,092.00
TX 128	Removal from and living with requirements were not met by the same specified relative. [§472(a)(I), (2)(A)(ii) and (3) of the Act and 45 CFR §§233.90 and 1356.2l(k) & (I)]  Ineligible: Entire Foster Care Episode Reported Disallowance Period: 05/26/2014 - current	Maintenance \$ 2,407.16  Administrative \$1,289.00
TX OS7	Removal from and living with requirements were not met by the same specified relative. [§472(a)(I), (2)(A)(ii) and (3) of the Act and 45 CFR §§ 233.90 and 1356.2l(k) & (I)]  Ineligible: Entire Foster Care Episode Reported Disallowance Period: 06/01/2007 - current	Maintenance \$ 24,601.72  Administrative \$ 23,406.00

**Maintenance**  
**\$ 91,543.22**  
**Administrative**  
**\$ 81,143.00**

**Total: \$ 172 686.22**

*Non-error Cases with Ineligible Payments*

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments (FFP)</b>
TX 27	Title IV-E funds were paid for the period before the month of required judicial findings of contrary to the welfare and reasonable efforts to prevent removal. [45 CFR §§1356.21(b) & (c) and 1356.60(a)(1)(i)]  Ineligible period: 12/31/2010	Maintenance \$17.31
TX 110	Title IV-E funds were paid for the period before the month of required judicial findings of contrary to the welfare and reasonable efforts to prevent removal. [45 CFR §§1356.21(b) & (c), and 1356.60(a)(1)(i)]  Ineligible period: 10/31/2011	Maintenance \$62.03
TX 111	Title IV-E funds were paid for the period before the month of required judicial findings of contrary to the welfare and reasonable efforts to prevent removal. [45 CFR §§1356.21(b) & (c), and 1356.60(a)(1)(i)]  Ineligible period: 11/30/2012	Maintenance \$63.18

**Total                      Maintenance                      \$142.52**

## Areas in Need of Improvement

The findings of this review indicate that the DFPS 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 - AFDC Eligibility

Removal from and living with requirements were not met by the same specified relative as required in federal statutes at [§472(a)(l), (2)(A)(ii) and (3) of the Act and federal regulations at 45 CFR §§ 233.90 and 1356.21(k) & (l)]. There were five (5) error cases (TX 15, TX 52, TX 108, TX 128, TX OS7) in which the DFPS failed to accurately identify the specified relative subject to the "contrary to welfare" judicial determination, or the child had not lived with that specified relative within six (6) months of the date the court proceeding was initiated at the time of removal and placement into foster care. The DFPS was given the opportunity to reconstruct all five (5) of the error cases to determine eligibility based on the correct removal home, but all five (5) sample cases continued to be errors because the child in each case had not lived with the specified relative subject to the "contrary to welfare" judicial determination within six months of the date the court proceeding was initiated. Additionally, DFPS was given the opportunity to reconstruct sample case TX 76 as the specified relative was inaccurately identified in that sample case; however, the case continued to be an error since the home of the specified relative did not meet the requirements for financial need and deprivation of parental support or care. The DFPS reconstructed five (5) cases in the 2009 review and two (2) cases in the 2012 review, because the removal home was not correctly identified initially in those cases.

### Title IV-E Requirements

Consistent with section 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. The child must have lived with that same specified relative within six months of the court proceeding leading to the requisite judicial determination is initiated or the voluntary placement agreement is signed. 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 in a voluntary removal. The specified relative's home from which the child is judicially or voluntarily removed is considered the AFDC removal home for title IV-E purposes. The AFDC determination is based on the removal home even when the child is physically removed from an interim caregiver. Also, if the child is living with an interim caregiver at the time of removal and, it has been more than six months since the child lived with the specified relative, then the "living with and removal from" requirement has not been met and the child is not title IV-E eligible for the duration of the foster care episode.

For title IV-E eligibility, a child must be eligible for AFDC (as in effect July 16, 1996) in the removal home during the month the court proceedings were initiated or voluntary placement

agreement was signed to judicially or voluntarily remove the child from the specified relative's home. If the child is not AFDC-eligible in the specified relative's home from whom the child was voluntarily or judicially removed, the child is ineligible for title IV-E for the duration of the foster care episode. (Please see ACYF-CB-PI-06-06 for additional information.)

Recommendations to address case errors:

The DFPS implemented a PIP after the 2012 title IV-E eligibility review to address errors found during the review. The PIP focused on the following areas of improvement: implementing the 100% AFDC standard as a second test of financial eligibility after the test at the 185% level; accurate determination of the AFDC income assistance unit/AFDC certified group; accurate determination of the AFDC home of removal; timely completion of background checks on foster family homes and child-care institutions; and quality assurance monitoring of the title IV-E determinations. To further the efforts implemented during the PIP, the DFPS should enhance its quality assurance (QA) process and training to assess if the "removal from and living with" requirements are met by the same specified relative who signed the voluntary placement agreement or who was subject to the judicial determination of "contrary to the welfare".

In the error cases, the AFDC determination was incorrectly based on the home of the relative where the child lived during the removal month, even though that was not the home from which the child was judicially removed. Additional training is recommended to help eligibility specialists and QA staff understand the "living with and removal from" requirements and the linkage to identifying the home that is the basis for the AFDC determination, which is one component of title IV-E eligibility.

A supporting strategy DFPS may wish to consider is to incorporate into DFPS' automation system eligibility module clear language requiring the eligibility specialist to review the court order to determine the specified relative who is the basis of the "contrary to welfare" determination in a judicial removal and incorporate a check to verify that is the AFDC determination is based on that home. Additionally, DFPS may want to consider revising the question which is currently in the eligibility module which reads, "At any time during the six months before the court proceedings were initiated was the child living with the managing conservator of the child?" For title IV-E purposes, the eligibility specialist is required to assess whether the child lived with the person(s) subject to the contrary to the welfare determination at any time during the six months before the court proceedings were initiated.

To support the eligibility specialist in correctly determining the specified relative, DFPS is encouraged to work with the Court Improvement Program (CIP) to better identify in the removal order the person(s) in relation to whom the contrary to the welfare finding is made by the court. Such collaboration is consistent with ACYF-CB-PI-12-02, which clarifies that the purposes of the CIP grant include addressing concerns identified in the title IV-E Foster Care Eligibility Review processes.

## Issue #2 - Correct coding of AFCARS data element 59

Three (3) cases were excluded from the original sample and replaced with cases from the oversample. Documentation provided by the state confirmed the case replacements were necessary because a title IV-E maintenance payment was not made for a period during the PUR. Additionally, state agency officials indicated juvenile justice cases for which title IV-E reimbursement was received were inadvertently processed and coded in a manner that prevented them from being part of the review sample.

### Title IV-E Requirement

The case sample and oversample drawn for review consist of cases of individual children with a "1" coded in AFCARS data element 59, "Sources of Federal Financial Support/ Assistance for Child", for the six-month reporting period of the PUR. As provided for in Appendix A of 45 CFR §1355.40, the AFCARS data element 59 inquires whether title IV-E foster care maintenance payments are paid on behalf of a child in foster care. If title IV-E foster care maintenance payments are paid on behalf of the child, the data element should be coded "1." If title IV-E foster care maintenance payments are not being paid on behalf of the child, the data element should be coded "0."

### Additional Concerns

The DFPS has three (3) cases with claims for title IV-E funds prior to the month of the judicial determination being made on the child. According to 45 CFR §§ 1356.21 (b) & (c), and 1356.60(a)(1)(i) title IV-E payments may not be made prior to the month of the court making a judicial determination that remaining in the home is "contrary to welfare" of the child and reasonable efforts to prevent removal. In the three (3) cases the DFPS claimed title IV-E funds prior to the month of the judicial determination. In each of these cases, the child was removed from the home at the end of the month and the court order was not obtained until the following month. The DFPS needs to ensure eligibility staff is reviewing the date the court made a judicial determination to determine when the title IV-E eligibility begins. The DFPS may want to consider if additional training and/or policy is needed to address this concern.

### Recommended Corrective Action

The validity of the sample and oversample depends on the accuracy with which the state agency completes the AFCARS data element 59. It is critical, therefore, that state agencies report data element 59 accurately. The CB recommends that the state verify whether a title IV-E foster care maintenance payment was made for the child, including children in juvenile justice cases, during the reporting period in answering foster care element 59. Data system monitoring should be conducted to ensure coding accurately reflects the funding source. Processing systems should be evaluated to determine internal accuracy and consistency of the data. Additionally, the payment system should check for the month of the judicial determination of contrary to the welfare and reasonable efforts to prevent removal and an edit should be added to prevent title IV-E payments prior to that month.

## **Program Strengths & Promising Practices**

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 improved program performance and successful program operations.

### Timely Permanency Hearings

The frequency of permanency hearings supports consistency in having the required judicial findings related to reasonable efforts to achieve the permanency plan occur in a timely manner. Court hearings to review the reasonable efforts to finalize the placement or permanency plan for the child were often held more frequently than the twelve (12) month regulatory requirement which led to timely findings.

### Safety Requirements

On March 26, 2010, the CB issued ACYF-CB-PI-10-02 to further clarify the safety requirements for foster parents and child-care institutions. The DFPS engaged in a PIP related to the outcome on safety requirements from the primary title IV-E review in February 2012. The DFPS has made remarkable improvement in this area. DFPS was able to complete the 2012 PIP and demonstrated significant improvement in the 2015 secondary title IV-E review as to safety requirements.

### Automated Data Systems

The Texas automation system, known as IMPACT, is robust in functionality. The eligibility determination process is automated within the system and has been upgraded since the last review to address the two-step process. The IMPACT system applies the former AFDC program's two-step process to establish whether a child would have met the income test for need under the state's title IV-A plan in effect on July 16, 1996. In the two separate steps, the state must: (1) determine whether the gross income of the AFDC family unit is less than or equal to 185% of the state's need standard; and, if eligible at this step, then (2) determine whether the unit's countable income is less than or equal to 100% of the state's need standard. The two-step process has been in place since 1981 (See section 8.4B Q/A #18 of the CB Child Welfare Policy Manual). The state's information system updates were successful to address areas of concern from past reviews. The Child-Care Licensing Automation Support System (CLASS) system for tracking child-care facility licensing and criminal records checks (CRC's) has the capacity to be effective in tracking and reviewing the licensing and background check process for foster parents and child-care facility staff. This system accounted for the successful completion of the 2012 PIP issues around safety requirements.

## **Disallowance**

A disallowance in the amount of \$91,543.22 in maintenance payments and \$81,143.00 in related administrative costs of Federal Financial Participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of \$142.52 in maintenance payments are 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 \$172,828.74 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**

As part of the state's ongoing efforts to improve its title IV-E foster care eligibility determination process, the CB recommends Texas examine identified program deficiencies and develop measurable, sustainable strategies that target the root cause of problems hindering the state from operating an accurate foster care eligibility program. Appropriate corrective action should be taken in instances of noncompliance with federal laws and regulations. The CB RO will partner with DFPS to address the two (2) areas listed in this report and other areas identified through its internal oversight initiatives in relation to its title IV-E program to improve its overall program performance.