

**Virginia
Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for
October 1, 2009 – March 31, 2010**

Introduction

During the week of August 2, 2010, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of Virginia's title IV-E foster care program. The review was conducted in collaboration with the State's Department of Social Services (DSS) and was completed by a review team comprised of representatives from DSS, local DSS agencies, CB Central and Regional Offices, ACF Regional Grants Management, peer reviewers, and additional stakeholders from across Virginia.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether Virginia's title IV-E foster care program was in compliance with the eligibility requirements as outlined in 45 CFR §1356.71 and section §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 October 1, 2009 through March 31, 2010. A computerized statistical sample of 100 cases (80 cases plus 20 oversample cases) was drawn from Virginia's 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 69 cases from the original sample plus 11 oversample cases. Eleven cases were excluded from the original sample because no title IV-E foster care maintenance payment was made during the PUR. Virginia 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 the 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 was 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 were reviewed to verify that 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. In addition, underpayments were identified for a sample case when an allowable title IV-E maintenance payment was not claimed by Virginia 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 69 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Eleven cases were determined to be in error for either part or all of the PUR and eight non-error cases were found to be 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 error cases and non-error cases with ineligible payments are being disallowed. In addition, three non-error cases were identified to have periods of eligibility for which Virginia did not claim allowable title IV-E maintenance payments. Because the number of cases in error (11) is greater than four, the State is not in substantial compliance for the PUR.

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 Virginia did not meet the compliance mandates.

Error Cases

Sample Number	Improper payment Reason & Ineligibility Period	Improper Payments (FFP)	
		Maintenance	Administration
6	Valid removal did not occur; child remained in removal home over a year after judicial removal for FC but the delayed physical removal was not authorized by the removal court order [45 CFR §1356.21(k)(2)] Ineligible: 07/01/08 – 06/30/10	\$11,659.93	\$16,870
17	Valid removal did not occur; child remained in removal home for two weeks after judicial removal for FC but the delayed physical removal was not authorized by the removal court order [45 CFR §1356.21(k)(2)] Ineligible: 02/12/10 – 06/30/10	\$1,961.54	\$1,436
23	Judicial determination of contrary to the welfare [§472(a)(1) and 471(a)(15)(B)(i) of the Act; 45 CFR §1356.21(c)] Ineligible: 06/07/07 – 06/30/10	\$14,331	\$3,591
25	Financial need not established for AFDC eligibility [§472(a)(3) of the Act; 45 CFR §1356.71(d)(1)(v)] Ineligible: 06/07/07 – 6/30/10	\$73,443	\$25,606
31	Foster care maintenance payment made for a the month prior to judicial findings of contrary to the welfare of the child and reasonable efforts to prevent removal [45 CFR §1356.21] Ineligible: 11/30/09	\$25.25	\$0
33	Foster care maintenance payment made for child care while child was on trial home visit [§ 472, 474, and 475 of the Act; 45 CFR §1356.60] Ineligible: 11/21/09 – 05/31/10	\$3,821.48	\$4,309
34	Judicial determination of reasonable efforts to finalize permanency plan not timely [§472 (a)(2)(A)(ii) of the Act; 45CFR §1356.21(b)(2)] Ineligible: 08/01/09 – 06/30/10	\$14,126.33	\$7,856
35	Foster care maintenance payment made for a period after responsibility for care and placement of the child was removed from the agency [§472(a)(2)(B) of the Act; 45 CFR §1356.71(d)(1)(iii)] Ineligible: 11/01/09 – 12/31/09	\$168.32	\$0

Sample Number	Improper payment Reason & Ineligibility Period	Improper Payments (FFP)	
		Maintenance	Administration
37	Foster care maintenance payment made for a period after the child was adopted and responsibility for care and placement of the child was removed from the agency [§472(a)(2)(B) of the Act; 45 CFR §1356.71(d)(1)(iii)] Ineligible: 12/22/09 – 12/31/09	\$95.15	\$0
	Foster care maintenance payment made for the month prior to judicial findings of contrary to the welfare of the child and reasonable efforts to prevent removal [45 CFR §1356.21] Ineligible: 08/04/06 – 08/31/06	\$167.55	\$614
67	Child did not live with the specified relative within six months of removal and AFDC eligibility not based on that specified relative's home [§472(a)(1) & (2) of the Act; 45 CFR §1356.21(k)(2)] Ineligible: 04/24/09 – 06/30/09	\$19,285.92	\$9,226
73	Valid removal did not occur; child remained in removal home for two weeks after judicial removal for foster care but the delayed physical removal was not authorized by the removal court order [45 CFR §1356.21(k)(2)] Ineligible: 02/12/10 – 06/30/10	\$1,852.15	\$2,873
Total		\$140,937.62	\$72,381.00
Total		\$213,318.62	

Non-Error Cases with Ineligible Payments

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)	
		Maintenance	Administration
OS2	Foster care maintenance payment made for child care while child was on trial home visit, which was not an allowable foster care setting [§ 472, 474, and 475 of the Act; 45 CFR §1356.60] Ineligible: 12/19/07 – 12/31/07 & 12/18/08 – 12/31/08	\$448.90	\$0
18	Foster care maintenance payment made for two providers for the same period and activity [§475(4) of the Act; 45 CFR §1356.60(a)(i)] Ineligible: 04/01/10 – 4/30/10	\$284.37	\$718
32	Judicial determination of reasonable efforts to finalize permanency plan not timely [§ 472 (a)(2)(A)(ii) of the Act; 45CFR §1356.21(b)(2)]	\$2,064.95	\$3,070

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)	
		Maintenance	Administration
	Ineligible: 03/01/06 – 7/31/06		
36	Foster care maintenance payment made prior to the month in which safety requirements were met for the foster home [§472(b) & (c) of the Act; 45 CFR 1356.71(d)(1)(iv) and 1355.20] Ineligible: 11/19/07 – 12/31/07	\$294.96	\$684
45	Foster care maintenance payment made for medical costs, which is outside the definition of allowable title IV-E program costs [45 CFR §1356.21 and 1356.60] Ineligible: 04/30/05 – 06/30/05	\$152.50	\$1,163
57	Judicial determination of reasonable efforts to finalize permanency plan not timely [§ 472 (a)(2)(A)(ii) of the Act; 45CFR §1356.21(b)(2)] Ineligible: 06/01/03 – 07/31/03	\$63.67	\$1,053
68	Judicial determination of reasonable efforts to finalize permanency plan not timely [§ 472 (a)(2)(A)(ii) of the Act; 45CFR §1356.21(b)(2)] Ineligible: 07/01/05 – 07/31/05	\$590.03	\$582
69	Foster care maintenance payment made for a period after the child was adopted and responsibility for care and placement of the child was removed from the agency [§472(a)(2)(B) of the Act; 45 CFR §1356.71(d)(1)(iii)] Ineligible: 06/04/10 – 06/30/10	\$343.24	\$718
Total		\$4,242.62	\$7,988.00
Total			

Underpayment Cases

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP) Maintenance
30	Foster care maintenance payments were canceled although child remained eligible [45 CFR §1356.21 and 1356.60] Eligible: 05/01/09 – 6/30/09 Title IV-E was not claimed for clothing costs for an eligible child [45 CFR §1356.21 and 1356.60] Eligible: 02/24/10 – 03/21/10	\$678.33
64	Title IV-E was not claimed for clothing costs for an eligible child [45 CFR §1356.21 and 1356.60] Eligible: 02/01/09 – 02/28/09	\$81.46
72	Title IV-E was not claimed for clothing costs for an	\$69.53

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP) Maintenance
	eligible child [45 CFR §1356.21 and 1356.60] Eligible: 08/27/08	
Total		\$829.32

Areas in Need of Improvement

The findings of this review indicate Virginia 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: Unallowable Program Costs

In five cases, it was determined that title IV-E payments were made for items outside the definition of allowable program costs. The review found three cases where title IV-E was claimed for costs such as medical costs and child care while the child was on a trial home visit. There was also one case where more than one child care payment was made to the same provider for the same period of time. Title IV-E can only cover expenses as included in the definition of foster care maintenance. In addition, a provider cannot be paid twice for the same activity during the same period of time. In two cases, foster care maintenance payments were made prior to the month in which all initial eligibility requirements are met. Federal financial participation (FFP) may not begin until the first day of placement in the month in which all initial eligibility requirements are met.

Title IV-E Requirement

Consistent with the Federal provisions at 45 CFR §1356.60(a)(i), title IV-E foster care maintenance assistance payments may be claimed only for the cost of providing those expenditures that meet the Federal definition of foster care maintenance at §475(4) of the Act. Virginia must document that foster care maintenance payments claimed for title IV-E reimbursement are for allowable expenditures in accordance with the statutory definition, are in amounts conforming to the State established rates of payment for the type and level of care provided, and reflect non-duplicative amounts of the costs of daily maintenance. All initial eligibility requirements, including judicial findings for contrary to the welfare and reasonable efforts to prevent removal, AFDC eligibility, State agency placement and care responsibility, licensure, and safety, must be met prior to claiming FFP.

Recommended Corrective Action

The State should work with the local offices and fiscal officers to institute adequate financial edits that will prevent payments for ineligible children or unallowable program costs. It will also be important for Virginia to clearly define in policy what may appropriately be claimed under title IV-E and provide training to agency workers. Virginia may use title XX, title IV-B funds or other appropriate funds to cover the costs of items and services not allowable under title IV-E.

Issue #2: Placement and Care Responsibility

During the onsite review, cases are examined to ensure that the title IV-E agency maintained responsibility for the placement and care of the child for the PUR. Placement and care responsibility may be granted in the removal court order or in a subsequent court ruling for a judicial removal. The review found three cases where the State no longer maintained responsibility for the placement and care of the child. Title IV-E funds were claimed for the

period after the child had been adopted in two cases and after the child aged-out of foster care in another case.

Title IV-E Requirement

Section §472(a)(2) of the Act requires that the responsibility for placement and care of a child be with the State agency administering the title IV-E plan approved under Section §471 of the Act, or any other public agency with whom the State agency has a written agreement in effect. The State agency must present documentation that it has responsibility for placement and care of the child for the entire period under review. The court order or voluntary placement agreement must indicate that the agency has this responsibility.

Recommended Corrective Action

Virginia will need to ensure that appropriate fiscal controls are in place at the local level to guarantee that children who have achieved permanency are no longer receiving title IV-E foster care maintenance payments. The State also is strongly urged to conduct systematic monitoring of its programmatic and financial operations to determine that required actions and supporting paperwork are completed timely and that title IV-E claims are submitted only for those cases meeting all applicable requirements.

Issue #3: Invalid Removal

The onsite review identified three cases that were determined to be in error because there was not a valid removal of the child from the home. Although the court made a determination in these cases that it was contrary to the child's welfare for the child to remain in the home, these children were never physically removed. In all three cases relatives who had previously been awarded custody indicated that they would not be able to continue to care for the children without financial assistance. The local agencies petitioned the court and orders were issued that legally removed the children from the specified relatives and placed them in foster care. However, the children physically remained in homes of their relatives who were then approved as foster parents.

Title IV-E Requirement

According to 45 CFR §1356.21(k)(2), a valid removal has not occurred when a court ruling or voluntary placement agreement sanctions the removal of the child from the parent or another specified relative and the child is allowed to remain in the same specified relative's home under the supervision of the State agency unless the court order authorizes the delayed physical removal of the child. The State agency must ensure that physical removal from the home coincides with the judicial ruling or the voluntary placement agreement that authorizes the child's removal from the home and placement in foster care.

Recommended Corrective Action

The State should provide local agencies and courts with specific training and policy that clearly indicates that if a court order sanctions a child's removal from the home, the child must be physically removed in order to be eligible for title IV-E foster care payments.

Issue #4: AFDC Eligibility

During the onsite review cases were evaluated to determine compliance with the requirements for the AFDC program as it was in effect on July 16, 1996. The review identified three cases that were found to be in error because they did not meet the requirements for AFDC. In two cases the agency did not appropriately determine financial need for the child based on the step-parent's income and one case where the child had not lived with the specified relative within six months of removal and financial need was not based on the specified relative's home.

Title IV-E Requirement

In order to meet AFDC requirements, a child must be determined to be a dependent child which is defined as a child who has been deprived of parental support or care, has been living with a parent or other specified relative in a place maintained as the home of the relative, and has not reached the maximum age designated for program eligibility. The State must establish that the child is financially needy based on the home from which the child is removed. The family unit in which financial need is based must include the child, the natural or adoptive parents, and the blood-related or adoptive siblings who are otherwise eligible and who live in the same household as the child. In States with support laws of general applicability that require a step-parent to support his step-children to the same extent as a natural or adoptive parent, step-parents married under State law to the natural or adoptive parent and in the same household as the child also must be included in the family income unit. Certain individuals who live in the same household must be excluded from the family unit because they are not eligible for AFDC including individuals eligible to receive Supplemental Security Income (SSI).

Recommended Corrective Action

Virginia should review its eligibility manual to ensure that correct information from the State's AFDC State Plan and policy manual is included. Based on this review, Virginia may need to revise or amend its title IV-E eligibility policy and provide training to eligibility staff on how to determine the family assistance unit and calculate financial need accurately.

Issue #5: Timeliness of Judicial Determinations Regarding Reasonable Efforts to finalize a Permanency Plan

One case was an error and three cases had ineligible payments because the requirement that a judicial determination that the agency make reasonable efforts to finalize a permanency plan was not satisfactorily met. The judicial determination may be rendered by the court at any point during the 12-month period and need not be tied to a specific type of court hearing.

Title IV-E Requirement

For a child who is judicially removed and remains in foster care for 12 months or more, 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 or not 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 month after it is due and remains ineligible until the judicial determination is made.

Recommended Corrective Action

The State should continue to develop and implement procedures to ensure timely judicial determinations of reasonable efforts to finalize the child's permanency plan regardless of the timing of the permanency hearing. The accuracy and reliability of eligibility determinations are generally increased through training of the judiciary and other court officials to correct delays in judicial findings as well as to secure court orders that reflect title IV-E criteria on legal authority, best interest, and reasonable efforts. Staff training will help to ensure workers make eligibility decisions based on the elements needed for compliance and to eliminate the authorization of payments prior to establishing compliance with the requirements. In addition, the establishment of a quality assurance system will allow the State to monitor the accuracy of eligibility determinations and claiming.

Issue #6: Safety Requirements for Child Care Institutions

Documentation that ensures safety considerations for staff working in child care institutions was not readily available during the onsite review. Although Virginia licensing workers review personnel files during regular monitoring visits to validate that individual facility employees have had criminal records checks and meet the State's requirements for safety, this information is stored in an automated system. This system does not currently have the capacity to produce a report that documents compliance. Lists were provided that included the names of facility staff, dates criminal records checks were completed, and outcomes of the checks; therefore no cases were found in error due to not meeting safety requirements.

Title IV-E Requirement

As specified in 45 CFR §1356.30(f) and 1356.71(g), the licensing file for a child care institution must contain documentation which verifies that safety considerations with respect to the staff of the facility have been addressed in order for a child placed in the institution to be eligible for title IV-E funding. The State must provide documentation validating that these safety considerations are satisfied for the duration of the child's placement during the PUR.

Recommended Corrective Action

Virginia's licensing process should be reviewed to determine whether there are sufficient controls in place to prevent children from being placed in an unsafe child care institution. A quality assurance process that periodically reviews the safety check requirements for all foster homes and childcare facilities should be instituted. Virginia's automated system for licensing should be modified to provide a report that will show that the State has verified the safety considerations of facility employees.

Issue #7: Foster Care Rates

During the review questions were raised about the rates paid to some facilities and child placing agencies. Documentation in one case record showed that one facility combined the rate for room and board with treatment services included individual therapy, behavioral consultation, group therapy and medication management. It was not clear that the State charged title IV-E for only

allowable expenses. Another case showed that a provider gave a reduction in the rate charged to the local DSS agency when the bill was paid within 45 days.

Title IV-E Requirement

According to §475(4) of the Social Security Act, foster care maintenance is defined as payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child and reasonable travel to the child's home for visitation and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence. The reasonable costs of administration and operation necessary to provide the items only for children served under title IV-E foster care are allowable elements in payments to child care institutions. Since these costs are limited types of activities and apply only to title IV-E eligible children, the costs of foster care in institutions will have to be allocated along two lines: (1) the allocation of costs, for purposes of Federal financial participation (FFP), based on allowable cost items and activities; and (2) the allocation of costs based on the proportion of children in the institution receiving foster care under title IV-E for those allowable elements compared to children whose care is paid under other programs.

Recommended Corrective Action

The establishment of a cost allocation system for institutions is a title IV-E agency responsibility and is a necessary precursor to the ability to claim FFP for allowable institutional foster care costs. As Virginia develops its rate process for group homes and residential care, it will be necessary to work with providers on establishing a cost allocation process that ensures only allowable costs are charge to title IV-E for eligible children.

Strengths and Promising Practices

The following positive practices and processes of the title IV-E foster care eligibility program were observed during the review. These approaches have led to improved program performance and successful program operations.

Multidisciplinary Collaboration

The review found that DSS has built collaborative relationships with many of its stakeholders to better serve children and families through the title IV-E foster care program. Representatives from Virginia's Court Improvement Program, DSS licensing staff, and local agency workers participated in the review. The review was an opportunity for these stakeholders to broaden their understanding of title IV-E and to foster the continued assistance of partners in meeting the Federal requirements. It will also assist DSS and stakeholders in coordinating programs that serve the same children and families.

Eligibility Documentation

Virginia instituted a standardized recordkeeping process to ensure that proper documentation of eligibility and case history information is maintained. This policy enhances the State's administrative processes that lead to improved program performance.

Disallowances

A disallowance in the amount of \$140,937.62 in maintenance payments and \$72,381 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 \$4,242.62 in maintenance payments and \$7,988 in related administrative costs of FFP 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 \$225,549.24 in FFP. Virginia must also 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

Virginia was found not in substantial compliance. Therefore, it is required to develop a Program Improvement Plan (PIP) to correct those areas needing corrective action as identified in this report. The PIP is not to exceed one year and should be developed by the State in consultation with Regional Office staff. Virginia must submit the PIP to the Regional Office within ninety (90) calendar days from the date of this report. The PIP must include the following components:

- Specific goals or outcomes for program improvement;
- Action steps required to correct each identified weakness or deficiency;
- Dates for completing each action step;
- How progress will be evaluated by the State and reported to the Regional Office, including the frequency and format of the evaluation procedures; and
- How the Regional Office will know that an action step has been achieved.

Following the expiration of the approved PIP completion date, a secondary review must be held during the second AFCARS reporting period that immediately follows the approved completion date of the PIP. The review sample for the secondary review will be 150 cases (plus at least a 10 percent oversample) drawn from Virginia's most recent AFCARS data submitted for the reporting period that immediately follows the approved PIP completion date.