

Louisiana Department of Children and Family Services

Primary Review Title IV-E Foster Care Eligibility

Report of Findings for October 1, 2015-March 31, 2016

Introduction

The Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of the Louisiana Department of Children and Family Services' (DCFS) title IV-E foster care program. The title IV-E foster care review (IV-E review) was conducted during the week of January 23, 2017 in collaboration with the DCFS and was completed by a review team comprised of representatives from the state DCFS and Office of Juvenile Justice (OJJ), CB Central and Regional offices, ACF Regional Grants Management office, and the Cherokee Nation.

Key purposes of the IV-E review are (1) to determine whether the Louisiana title IV-E foster care program is in compliance with 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 appropriate payments are made on behalf of eligible children.

Scope of the Review

The IV-E review encompasses a sample of the state's foster care cases in which a title IV-E maintenance payment is claimed for an activity that occurs in the six-month period under review (PUR) of October 1, 2015 - March 31, 2016. A computerized statistical sample of 80 cases plus 20 oversample cases was drawn from data the state submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. Eighty (80) cases were reviewed, which consisted of 76 cases from the original sample plus 4 of the oversample cases.

Four (4) OJJ cases were excluded from the original sample since there were no case activities during the PUR for which title IV-E funds were claimed. Discussions with state staff and an examination of case documentation confirmed the necessity of eliminating these cases from the review sample and replacing them with cases from the oversample. State agency officials indicated the cases were incorrectly coded for title IV-E maintenance instead of the correct funding source. The state is reminded that the validity of the review sample is dependent on the accuracy and timeliness of the state title IV-E agency's reporting of AFCARS foster care data element 59. Appendix A of 45 CFR §1355.40 provides that AFCARS element 59 is coded as "1" to indicate title IV-E foster care when title IV-E foster care maintenance assistance is the applicable source of income for the child's care at any time during the six-month AFCARS period for a child meeting all title IV-E eligibility criteria. Element 59 is coded as "0" when title IV-E foster care maintenance is not the applicable funding source for the child's care. The CB recommends staff training and quality assurance be conducted on an ongoing, regular basis to ensure the system accurately reflects the funding source for each child.

In accordance with federal provisions at 45 CFR 1356.71, the state is reviewed against 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) and (c), respectively;
- Voluntary placement agreements as set forth in §§472(a)(2)(A)(i) 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 1356.71(d)(1)(iv); and
- Safety requirements for the child’s foster care placement as required at §471(a)(20)(A) of the Act and 45 CFR §1356.30.

The case record of each child in the selected sample is reviewed to verify title IV-E eligibility. The foster care provider’s record also is looked at to ensure the foster family home or child care institution where the child resided during the PUR is fully licensed and meets safety requirements. Payments made on behalf of each child also are reviewed to verify expenditures are properly claimed under title IV-E and to identify underpayments eligible for claiming.

A sample case is assigned an error rating when the child is not eligible on the date of activity in the PUR for which title IV-E maintenance is claimed. A sample case is cited as non-error with ineligible payment when the child is not eligible on the activity date outside the PUR or the child is eligible in the PUR on the date of an unallowable activity and title IV-E maintenance is claimed for the unallowable activity in either situation. In addition, underpayments are identified for a sample case when the state unintentionally has not claimed an allowable title IV-E maintenance payment for an eligible child within the 2-year filing period specified in 45 CFR §95.7 and the filing period has not expired.

The CB and Louisiana agreed the state would have 15 days following the onsite review to submit additional documentation for a case identified during the onsite review as in error, in “undetermined” status, or not in error, but with ineligible payments.

Compliance Finding

The review team has determined 78 of the 80 sample cases have met all eligibility requirements (i.e., are deemed non-error cases) for the PUR. Two cases are determined as in error for not meeting eligibility requirements either for periods only during the PUR or for a child’s entire foster care episode.

The CB has determined the Louisiana title IV-E foster care program is in substantial compliance for the PUR. Substantial compliance in a primary IV-E review means the total number of error

cases is four or fewer cases determined as not meeting eligibility requirements for the PUR. Since the state is in substantial compliance, a secondary review of 150 sample cases is not required. The next primary review will be held in three years.

Case Summary

The following chart records improper payment cases comprised of error cases; reasons for improper payments; improper payment amounts; and federal provisions for which the state does not meet compliance mandates. Calculation of improper payments is based on the federal financial participation (FFP) rates of maintenance payments at the state’s Federal Medical Assistance Percentages (FMAP) for applicable year(s) for each sample case.

Error Cases:

Sample Number	Improper Payment Reason & Ineligibility Period October 1, 2015-March 31, 2016	Improper Payments (FFP)
#23	Removal from & living with requirements not met by the same specified relative. The child lived with an aunt for over a year prior to being judicially removed from parents. [§472(a) of the Act; 45 CFR §1356.21(k) & (l)]	\$10,815 Maintenance
	Ineligible: Entire Foster Care Episode; Reported Disallowance Period: 06/01/2014 -12/27/2015	\$12,956 Admin.
#73	Criminal records checks were not completed on the foster parents. [§471(a)(20)(A) of the Act and 45 CFR §1356.30]	\$5,706 Maintenance
	Reported Disallowance Period: 03/25/2015—07/31/2016	\$11,707 Admin.

Total Maintenance FFP: \$16,521
Total Administrative FFP: \$24,663
Total: \$41,184

Areas Needing Improvement

Findings of this review indicate 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: Living with/Removal from Same Specified Relative:

Removal from and living with requirements were not met by the same specified relative as required in federal statutes at §472(a) of the Act and federal regulations at 45 CFR §1356.21(k) & (l). There was one (1) error case (#23) in which the DCFS failed to accurately identify in its

AFDC eligibility determination the specified relative subject to the “contrary to welfare” judicial determination. The child had not lived with that specified relative within six (6) months of the date the court proceeding was initiated to remove and place the child into foster care. The Instanter Court Order substantiated the mother’s home as the basis of the judicial determination regarding the child’s removal. The agency’s work papers documented the AFDC determination based on an aunt’s home. The DCFS was given the opportunity to reconstruct the error case to determine eligibility based on the correct removal home, but the sample case continued to be in error due to no available record to show the child had lived with the mother, who was the specified relative subject to the “contrary to welfare” judicial determination, within six months of the date the court proceeding was initiated. Instead, the case information reflected the child lived with an aunt for approximately eight (8) years. In sum, the “removal from” requirement was met by the mother’s home and the “living with” requirement was met by the aunt’s home.

Title IV-E Requirement:

Consistent with section 45 CFR §1356.21(k) & (l), 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 also must have lived with that same specified relative within six months of the date the court proceeding is initiated to remove the child or when 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. Therefore, 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 that 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 has lived with the specified relative from whom judicially or voluntarily removed, 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 in accordance with federal requirements at §472(a)(1),(2)(A)(ii) and (3) of the Act, 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. The eligibility factors are examined for that month in the same manner as if the child still had been living in that 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 error:

The DCFS should enhance its quality assurance (QA) process and training to correctly assess whether 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 case, the child was not living with the specified relative who is the subject of the contrary to welfare judicial determination, nor had the child lived with the specified relative within 6 months of the date the court proceedings were initiated to remove the child. In both the 2007 and 2013 IV-E reviews, these types of errors were also found, indicating the need for further efforts to help staff understand these federal eligibility requirements. Additional training is recommended to help eligibility specialists and QA staff understand the “living with and removal from” requirements and the linkage to correctly identifying the home that is the basis for the AFDC determination, which is one integral component of title IV-E eligibility.

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. The DCFS has a mechanism in place under the “Relationship” section on the Office of Community Services-Financial Assessment Transaction Form (OCS/FAST I) that requires the eligibility specialist to “*Attach Petition*”. However, a supporting strategy DCFS should consider is to incorporate into its eligibility determination process 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 to check that information against the petition and other available information to determine if the child lived with the specified relative within six months prior to the initiation of court proceedings for removal. Additionally, the eligibility determination process should incorporate a check to verify that the AFDC determination is based on that specified relative’s home. Further, DCFS should consider revising the question which is currently in its eligibility module that reads, “Did Child Reside With Any Other Relative Within 6 Months of Court Action?” To better support the eligibility determination, the question could read, “Did the child live with the specified relative, who is the basis of the “contrary to welfare” determination, within six months of initiation of court action for removal?” It is noted that court actions for removal in DCFS’ cases are initiated by a verbal or written petition to the courts.

Court orders were identified during the review which made determining the specified relative who is the basis of the “contrary to welfare” determination challenging. To support the eligibility specialist in correctly determining the specified relative, DCFS is encouraged to continue its 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.

Issue # 2: Safety Requirements:

There was one (1) error case (#73) in which criminal background checks were not completed on foster parents prior to licensure by the DCFS and the period title IV-E foster care maintenance payments were made for the child placed in the foster home. The minimum requirements for foster and adoptive homes per the DCFS Policy 9-210, “Qualifications of the Foster and Adoptive Parents (G)”, require that a fingerprint-based criminal record clearance on foster/adoptive parent applicants and all household members 18 years of age or older shall be conducted prior to certifying a family to foster or adopt. However, the state’s documentation in the error case showed there was no follow up on the FBI statement that the quality of the fingerprint characteristics was too low to be used for a criminal record check on the applicants.

Therefore, the background checks for the foster home were not completed prior to the period of the claiming of title IV-E funds for the child in placement.

Title IV-E Requirement:

To ensure that a child is not placed in a foster care setting where the potential caregiver has caused or is likely to cause harm to a child, §471(a)(20) of the Act and 45 CFR 1356.30 require states to examine the potential safety risks posed to the child by a foster care provider. If, like Louisiana, the state did not opt out of the 1997 criminal record check (CRC) provisions, the state is required to complete a criminal record check on the foster parent prior to the licensure of the foster family home and it must confirm that the foster parent had not been convicted of any of the felonies listed in sections 471(a)(20)(A)(i) and (ii) of the Act. As of October 1, 2008, federal regulations required title IV-E agencies to include a fingerprint-based check of the National Crime Information databases for newly licensed foster parents. In cases where foster parents have results from a fingerprint-based FBI check returned with “unclassifiable” prints, the state should follow guidance provided by the CB in the Child Welfare Policy Manual at section 8.4F, Question and Answer 30. The state agency must document that the foster care provider meets the established safety standards before title IV-E foster care maintenance payments are claimed for the period of the child’s stay with the foster care provider.

Recommendations to address case errors:

The DCFS should augment its training and quality assurance system in the title IV-E payment process to ensure that §471(a)(20) of the Act and 45 CFR 1356.30(f) are met for a child’s foster care placement and that documentation of compliance sufficiently supports the state’s claims for title IV-E foster care maintenance payment on behalf of the child in the placement. Furthermore, the agency should ensure it establishes clear policy to address situations when there is an inability to obtain fingerprints or when there is an inability to obtain results due to low quality fingerprints. The DCFS also would benefit from developing such processes to ensure safety requirements are met, not only for foster parents but also for child care staff working in institutional settings.

Additional Program Concerns

Safety requirement for child care institutions:

For child care institutions, 45 CFR §1356.30(f) requires states to set procedures that address safety considerations with respect to the caregiving staff of the institution. The mechanism used to satisfy the safety requirement should be written into state policy, procedures or statutes, and incorporated into the licensing documentation. The safety requirement is applicable to all child care institutions operating as foster care facilities licensed on or after March 27, 2000.

Louisiana’s Title 67 that governs licensing requirements for child residential care, in part, prohibits individuals from working in a child residential facility if the individual’s name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is an official third party decision that the individual does

not pose a risk to children. Prior to obtaining a license, volunteering or becoming a staff person in a residential facility each person is required to complete a state central registry disclosure form.

There were no cases improperly paid because of noncompliance with this aspect of the state requirement; however, this requirement is of concern because the licensing agency is not actively checking the state central registry (SCR) to verify the information submitted on the self-disclosure form. Such reliance on self-disclosure is not a proactive measure to help ensure child safety or reduce safety risks. The lack of state requirements to actively check the SCR for valid findings of abuse or neglect prevents timely assessment of potentially serious risk factors and introduces the possibility of missing risk factors altogether. It is recommended that the state implement procedures to check the SCR initially and annually thereafter.

Program Strengths and Promising Practices

The following positive practices and processes of the state's title IV-E program were observed during the review. These approaches seem to have led to improved program performance and successful program operations.

Eligibility Determinations:

As noted in the previous IV-E review, the utilization of specialized eligibility staff to complete the title IV-E eligibility determination process continues to be an asset for DCFS. A program specialist and financial specialist support the regional staff from the agency's central office. The eligibility staff works well with the foster care and investigation staff throughout the state to ensure that the case files and documentation are thorough and complete. With the exception of the specific issues noted above, we found that the eligibility staffs have a clear understanding of title IV-E foster care eligibility requirements regarding the AFDC-related requirements; judicial determinations regarding removal, placement authority and ongoing permanency planning. The dedication of specialized staff resources to the program reduces the possibility of ineligible or erroneous title IV-E foster care maintenance payments, as reflected in the 78 cases in the sample without an eligibility issue identified during this review. Timely and thorough completion of the state's multiple "*Financial Assessment and Transaction Forms*" by caseworkers and eligibility specialists has facilitated thorough, consistent documentation of the eligibility determination process. Reviewers were able to understand key decision-making points in determining eligibility. Specialized DCFS IV-E supervisors provide training to foster care, adoption, and OJJ staff in their regions. State Office staffs provide guidance on changes to title IV-E regulations and policy through monthly calls and WebEx sessions to equip title IV-E field staff with information that they can use to train other staff. Additionally, they provide title IV-E training to new supervisors across all programs annually.

A key element identified as supporting accurate eligibility determinations is the collaborative working relationship between DCFS and OJJ staff. The DCFS and OJJ staffs are able to combine different perspectives and expertise to ensure each agency's staff are complying with the title IV-E requirements. This ownership of shared responsibility is applauded as it has been instrumental in creating a strong sense of investment and equal participation for both agencies.

During this review the OJJ program specialists demonstrated quality performance by ensuring that each staff member provided the specific information required for accurate title IV-E eligibility determinations. As noted in the 2013 IV-E report, OJJ continues to provide specialized training to ensure their staff understand title IV-E eligibility requirements. Additionally, OJJ has a quality assurance process to review cases on a monthly basis.

Efforts toward Continuous Program Improvement:

The review found that the DCFS has continuously prioritized program improvements regarding their eligibility determination and payment system. In the 2011 and 2013 title IV-E eligibility review 22 cases and 24 cases, respectively, were found with ineligible claims during the period under review as a result of duplicate payments to multiple foster care providers. Since those reviews, the DCFS has made modifications to their data system to ensure payments are not made to multiple providers for the same activity and date, and payments are not made to a provider for an unallowable placement.

The DCFS now has a quality assurance system in place that routinely examines the effectiveness of its processes for eligibility determination, documentation and prevention of improper payments. Case reviews are completed at the regional level by title IV-E supervisors on all new determinations done by analysts to verify that the funding source determination is correct. Cases are also reviewed every time a child moves into or out of title IV-E eligibility status in order to determine that the applicable fiscal adjustment has been requested, as well as to identify problems related to insufficient or untimely court orders. Random spot checks of redeterminations and changes are done periodically to ensure that all procedures are being followed and that policy is being applied correctly. All initial determinations are reviewed at the State Office level for accuracy based on the court orders and all FAST forms submitted. Thorough review of all FAST forms submitted to state office provides an opportunity to document any training needs for the analysts, case workers and supervisors. Child welfare consultants at the State Office level monitor data throughout the life of the foster care case to ensure that eligibility determinations are made timely, that correct funding is used, and to assure that appropriate adjustments are made.

Efforts to Improve Documentation of Judicial Determinations:

The review found that the DCFS has built a viable partnership with the state Court Improvement Project (CIP) which has helped broaden the judiciary's understanding of title IV-E requirements and furthered its continued assistance to the state in meeting federal requirements. The DCFS continues to work closely with the CIP to train and support judges, attorneys, and other court staff to monitor timeliness of judicial findings and to ensure court orders are provided timely to document eligibility for the DFS and OJJ cases.

Affidavits:

Affidavits were detailed regarding case circumstances, often providing an extensive case history of the family including the actual date the child was removed from the home, efforts made by the agency to prevent removal or facts in support of why such efforts were not reasonable; and the

facts to support a “contrary to the welfare” finding for the children in the home. The information in the affidavits was comprehensive and adequately established the foundation from which the court could make important judicial determinations that were specific to the child’s circumstances. They also provided important information for the eligibility determinations.

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.

Disallowances

A disallowance in the amount of \$16,521 in maintenance payments and \$24,663 in related administrative costs of FFP is assessed for title IV-E foster care payments that are claimed for error cases. The total disallowance as a result of this IV-E review is \$41,184 in FFP. Because an administrative disallowance is assessed on all error cases based on average administrative claims per month, a separate disallowance was not taken for the unallowable child-specific costs of \$600 for transportation that the state’s payment history shows as claimed individually on the two error cases.

Louisiana also must identify and repay any ineligible payments for error cases that occur for periods subsequent to the PUR. No future claims can be submitted on these cases until it is determined 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 Louisiana examine the identified program deficiencies pertaining to AFDC and safety requirements and develop measurable, sustainable strategies that target root causes of issues and concerns hindering the state from operating an accurate foster care eligibility program. The CB Region 6 office staffs are available to assist the state in identifying corrective action and obtaining support available through a national network of training and technical assistance centers to help the state address issues and concerns raised during this IV-E review.