

North Dakota
Final Report - REVISED
Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for
April 1, 2023 – September 30, 2023

Introduction

The Children's Bureau of the Administration for Children and Families conducted a primary Title IV-E Foster Care Eligibility Review (IV-E Review) of North Dakota's foster care program under title IV-E of the Social Security Act. The IV-E Review was conducted during the week of April 22, 2024, in collaboration with the North Dakota Department of Human Services and was completed by a review team comprised of representatives from the state title IV-E eligibility team, the Children's Bureau Central and Regional offices, ACF Grants Management Specialist and cross-state Peer Reviewers.

Key purposes of the IV-E Review are (1) to determine whether a state's title IV-E foster care program is in compliance with eligibility requirements as delineated in title IV-E 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 its eligible children.

Scope of the Review

The IV-E Review encompassed a sample of North Dakota's foster care cases in which a title IV-E foster care maintenance payment was claimed for an activity that occurred within the 6-month period under review (PUR) of April 1, 2023 – September 30, 2023. 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 78 cases from the original sample plus two (2) oversample cases. Case numbers 4 and 54 were excluded from the original sample because neither had a title IV-E foster care maintenance payment during the period under review. The state provided documentation to support excluding these cases from the review sample and replacing them with cases from the oversample.

In accordance with federal statutes and regulations at 45 CFR 1356.71, the state was 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)(ii) 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 the title IV-E agency as stipulated in §472(a)(2)(B) of the Act and 45 CFR § 1356.71(d)(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);
- Child's placement in a foster family home, childcare institution or residential family-based treatment facility for substance abuse as specified in §§472(b), (j) and (k) and §475A of the Act and 45 CFR § 1356.71(g);
- Child's placement setting is fully licensed in accordance with §§ 472(c) and (j) of the Act and 45 CFR § 1356.71(d)(1)(iv) and
- Safety requirements for the child's foster care placement as required at §471(a)(20) of the Act and 45 CFR §1356.30 and 1356.71(d)(1)(iv).

The case record of each child in the selected sample was reviewed to verify title IV-E eligibility. The foster care provider's record was also reviewed to ensure the foster care setting where the child resided during the PUR was fully licensed and met applicable safety requirements. Payments made on behalf of each child were examined to verify expenditures were properly claimed under title IV-E and to identify underpayments eligible for claiming.

A sample case was assigned an error rating if the child was not eligible on the date of activity in the PUR for which title IV-E maintenance was claimed. A sample case was cited as non-error with ineligible payments if the child met eligibility requirements for the PUR, but there were periods in a child's foster care episode for which title IV-E maintenance payments were improperly claimed. In addition, underpayments were identified for a sample case if the state unintentionally failed to claim 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 had not expired.

The Children's Bureau and North Dakota agreed the state could have two week(s) following the onsite review to submit additional documentation for a case during the onsite review that was identified as in error, in "undetermined" status, or not in error but with ineligible payments.

Compliance Finding

The Children's Bureau has determined that of the 80 sample cases reviewed, all met eligibility requirements (i.e., are deemed non-error cases) for the PUR. Two non-error cases met eligibility requirements for the PUR but are found to have periods in a child's foster care episode for which title IV-E maintenance payments were improperly claimed.

The Children's Bureau has determined North Dakota's title IV-E foster care program is in substantial compliance with federal eligibility requirements for the PUR. Substantial compliance in a primary IV-E Review means the total number of error cases determined as not meeting eligibility requirements for the PUR is four (4) cases or less. Additional findings for non-error cases with ineligible payments are not considered in determining the state's compliance level. Because the state is in substantial compliance, a secondary review of 150 sample cases is not required. The next primary review will be held in 3 years.

Case Summary

The following charts record improper payment cases comprised of non-error cases with ineligible payments; reasons for improper payments; improper payment amounts; and federal provisions for which the state does not meet compliance mandates. Calculation of improper payment amounts is based on the dates specified in the chart and the federal financial participation (FFP) rates of maintenance payments at the state's Federal Medical Assistance Percentages (FMAP) for applicable period(s) for each sample case.

Non-Error Cases with Ineligible Payments:

Sample Number	Improper Payment Reason & Ineligibility Period April 1, 2023 – September 30, 2023	Improper Maint. Payments (FFP)	Improper Admin. Payments (FFP)
39	Timeliness of Judicial Determinations Regarding Reasonable Efforts to Finalize a Permanency Plan. An untimely judicial determination renders the child ineligible beginning on the first day of the month after it is due and continuing to the first day of the month it is attained. 472(a)(2) of the Act; 45 CFR § 1356.21(b)(2) & (d)] Ineligible Period: May 2016 – December 2016	\$1,924	\$4,480

Sample Number	Improper Payment Reason & Ineligibility Period April 1, 2023 – September 30, 2023	Improper Maint. Payments (FFP)	Improper Admin. Payments (FFP)
69	IV-E funds claimed for a period before the month in which the judicial determination of the contrary to the welfare was made. The shelter care hearing was held on 3/1/2021 with the required judicial determinations of contrary to welfare and reasonable efforts. The ineligible period is outside the PUR; therefore, the sample case is a non-error case with ineligible payments that are disallowed. § 472(a)(2)(A)(ii) of the Act; 45 CFR § 1356.21(c) Ineligible Period: 02/24/2021-02/28/2021	\$ 220	\$0
-	Total Maintenance FFP and Total Administrative FFP	\$2,144	\$4,480

Overall Total FFP: \$6,624

Areas Needing Improvement

Findings of this IV-E Review indicate North Dakota 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: Timeliness of Judicial Determinations Regarding Reasonable Efforts to Finalize a Permanency Plan. One non-error case has ineligible payments because the judicial requirement of “reasonable efforts to finalize a permanency plan” was not satisfactorily met for the specified period.

Title IV-E Requirement: Consistent with § 472 of the Act and federal regulations at 45 CFR §1356.60 (a)(1)(i), title IV-E foster care maintenance payments may not be claimed on behalf of a child for a period that is before the month all title IV-E eligibility criteria are met, including those pertaining to the judicial determinations of contrary to the welfare and reasonable efforts to prevent removal. When the title IV-E maintenance payments are claimed for periods before the child is title IV-E eligible, the title IV-E maintenance payments are ineligible for claiming and are disallowed when claimed.

Recommended Corrective Action: The state should continue to develop and implement procedures to ensure timely judicial determinations of “reasonable efforts to finalize the permanency plan” regardless of the timing of the permanency hearing. The accuracy and reliability of eligibility determinations generally are increased through ongoing 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 interests, and reasonable efforts.

In addition, the Children’s Bureau recommends North Dakota put in place a quality assurance system to monitor accuracy of eligibility determinations and claiming processes.

Issue #2: Title IV-E Payments Claimed Prior to Judicial Determination Requirement Met – Contrary to the Welfare.

In one non-error case, the review determined that title IV-E maintenance payments were claimed for periods prior to the month the contrary to the welfare requirement was met. In sample number 69, the county (zone) claimed title IV-E four (4) days in February 2021, the month before securing a contrary to welfare finding in March 2021.

North Dakota’s juvenile courts issue a 96 Hour Temporary Custody Order (TCO) signed by a juvenile court officer or director to give custody to an agency. However, the TCO does not contain judicial determinations as the JCO or JCD does not have the authority to make such judicial determinations. A shelter care hearing is required to obtain the judicial determinations.

Title IV-E Requirement: Consistent with § 472 of the Act and federal regulations at 45 CFR §1356.60 (a)(1)(i), title IV-E foster care maintenance payments may not be claimed on behalf of a child for a period that is before the month all title IV-E eligibility criteria are met, including those pertaining to the judicial determinations of contrary to the welfare and reasonable efforts to prevent removal. When the title IV-E maintenance payments are claimed for periods before the child is title IV-E eligible, the title IV-E maintenance payments are ineligible for claiming and are disallowed when claimed.

Recommended Corrective Action: The North Dakota Department of Human Services should work with the state Court Improvement program to consider any needed changes in judicial procedures.

Further, the Children’s Bureau encourages the state to consider implementing system safeguards, preventing counties (zones) from claiming title IV-E unless and until it has secured the relevant judicial determinations in the initial court order.

Program Strengths and Promising Practices

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

Automated Data System: North Dakota has three main systems of record. The Comprehensive Child Welfare Information and Payment System (CCWIPS) is a mainframe-based system that has been in existence for well over 30 years in ND. State eligibility workers enter information regarding providers licenses, rates, and the authorization of foster care and subsidy payments.

CCWIPS cannot share data between other systems, such as the Economic Assistance Information System, the Medicaid Management Information System, or external data systems such as the Supreme Courts Information Management System.

The Foster Care and Sub-Adopt Eligibility Unit (FCSA) manages the eligibility determination process by providing technical assistance, tracking, and monitoring title IV-E eligibility determinations and recording eligibility decisions in CCWIPS.

Eligibility Determinations: In 2021, NDDHHS centralized determination and re-determination of title IV-E eligibility in a specialized unit. These determinations previously were performed by county office(s) staff.

The FCSA Unit staff provide training and work with county/zone/tribal agencies, the courts, licensing providers, and state fiscal officials to help assure required actions and supporting paperwork are completed timely and accurately. Lead FCSA case managers supervise assigned foster care workers and are available daily to provide guidance and respond to questions/issues that arise regarding the eligibility and payment process matters.

Weekly area specific team meetings are held with county (zone) foster care eligibility workers. Monthly foster care eligibility "Teams" meetings are held with the four Tribal Nation child welfare agencies, and in-person meetings are available, as needed and requested. Participants include case managers, agency directors, designated foster care agency workers, FCSA eligibility unit supervisor, lead workers, eligibility workers and Medicaid workers. Discussions about outcomes affecting policy or procedures are documented to ensure consistency. Further, during monthly statewide conference calls, the FCSA supervisor provides unit updates and training on topics that impact foster care eligibility and payments.

Disallowances

A disallowance in the amounts of \$2,144 in maintenance payments and \$4,480 in related administrative costs of FFP are disallowed for title IV-E foster care payments that are claimed improperly for non-error cases. The total disallowance as a result of this IV-E Review is \$6,624 in FFP.

North Dakota also must identify and repay any ineligible payments for error and non-error cases that occur for periods prior and subsequent to the PUR that are beyond those identified in this report for the improperly paid cases. No future claims can be submitted on these cases until it is determined all eligibility requirements are met.

Next Steps

The Children's Bureau recommends North Dakota examine identified program deficiencies and develop measurable, sustainable strategies that target root causes of issues and concerns hindering the state from operating an accurate foster care eligibility program.

Appropriate corrective action must be taken in instances of noncompliance with federal laws, regulations, and policies. The Children's Bureau Regional Office will work with the state agency, to provide technical assistance, as needed.