

**Final Report
Pennsylvania
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 Pennsylvania's title IV-E foster care program. The title IV-E foster care review (IV-E review) was conducted during the week of September 12, 2016, in collaboration with the Pennsylvania Department of Human Services (DHS) Office of Children, Youth & Families (OCYF) and was completed by a review team comprised of representatives from the state title IV-E agency, state court improvement program (CIP), CB Central and Regional offices, and ACF Regional Grants Management office.

Key purposes of the IV-E review are (1) to determine whether the Pennsylvania 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 encompassed 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 from the original sample. Cases from the oversample were not reviewed as there were no cases excluded from the original sample.

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) 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 examined to ensure the foster family home or child care institution where the child resided during the PUR is fully licensed and meets the 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 paid 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 Children’s Bureau and OCYF agreed the state would have two weeks following the onsite review to submit additional documentation for a case during the onsite review identified as in error, in “undetermined” status, or not in error but with ineligible payments.

Compliance Finding

The review team determined 79 of the 80 sample cases have met all eligibility requirements (i.e., were deemed non-error cases) for the PUR. One (1) case was determined to be in error for not meeting the eligibility requirements for the entire foster care episode which included the PUR. No non-error cases with ineligible payments or cases with underpayments were identified during the review.

The Children’s Bureau has determined the Pennsylvania 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. Supplemental findings for non-error cases with ineligible payments are not considered in determining the state’s level of compliance with federal requirements. Since OCYF 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 the improper payment case comprised of the one error case; reasons for the improper payments; improper payment amounts; and federal provisions for which the state did not meet the 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 each applicable year for the sample case.

Error Case:

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Maintenance Payments (FFP)	Improper Administrative Payments (FFP)
PA-79	Foster care maintenance payments claimed when no judicial determination that reasonable efforts to prevent removal had been made [§471(a)(15) and 472(a)(2)(A)(ii) of the Act; 45 CFR §1356.21(b)(1)(ii)] Ineligible: 3/04/2014 – 6/13/2016 (foster care episode)	\$31,900.33	\$8982.00
Subtotal		\$31,900.33	\$8982.00
Total:		\$40,882.33	

Areas Needing Improvement

The 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: *Judicial determination of reasonable efforts to prevent removal*

One (1) case was in error because foster care maintenance payments were claimed for the entire foster care episode which included the PUR when a judicial finding of reasonable efforts to prevent removal had not been made. The agency had been providing services to the family as an in-home case with judicial oversight; the child was removed from the home through a “Permanency Review Order” and placed in foster care on March 4, 2014. A judicial determination that the agency made reasonable efforts to prevent removal was not made within 60 days of removal. Title IV-E maintenance payments were improperly claimed for the entire foster care episode.

Title IV-E Requirement: As specified in sections 471(a)(15)(B) and 472(a)(2) of the Act, for the purpose of title IV-E a judicial removal must include a determination to the effect that the title IV-E agency has made reasonable efforts to prevent the removal of the child from the specified relative or that reasonable efforts are not necessary prior to removal. For a child removed after March 27, 2000, the judicial determination to the effect that *reasonable efforts to prevent removal* have been made (or are not required) must be obtained no later than 60 days from the date the child is removed from the specified relative. If the judicial determination is not made within 60 days as prescribed in federal regulations, the child is ineligible for the entire foster care episode. [45 CFR § 1356.21(b)(1)(ii).]

Recommended Corrective Action: State eligibility determination staff should ensure that a judicial determination of reasonable efforts to prevent removal is documented in a court order, or court transcript, within 60 days of a child's removal in determining title IV-E eligibility. Particular attention should be directed toward cases in which the child is removed from a home receiving in-home services with judicial oversight. Court orders need to be clear and specify reasonable efforts to prevent removal findings. It is recommended that OCYF continue to collaborate with the CIP to provide guidance and training to judges, masters, and other court personnel that court orders need to include specific case-level information regardless of the nature of the court proceeding.

Additional Concerns

Issue: *Judicial determination of it is contrary to a child's welfare to remain in the home.* In several cases reviewed the first court ruling sanctioning removal of a child was a verbal order. Confirmation that a judicial determination was made in that ruling that it was contrary to the welfare of the child to remain in the home was documented in a subsequent written order. Though no cases were found to be in error for this reason, the *contrary to welfare* finding was not consistently clearly documented. While the subsequent written court order in some cases reviewed explicitly documented the *contrary to welfare* finding, in other cases this finding was more generally referenced but not affirmatively cited.

Title IV-E Requirement: The judicial determination regarding *contrary to welfare* must be made in the first court ruling that sanctions, even temporarily, the child's removal from home [45 CFR 1356.21(c)]. If the judicial determination is not made in the first court ruling pertaining to that removal from home, this eligibility requirement is not met and the child is ineligible under title IV-E for the entire foster care episode.

Recommended Corrective Action: The OCYF should collaborate further with the Pennsylvania CIP coordinator to develop procedures to ensure a determination that it is contrary to the welfare of a child to remain in the home is made and fully documented in the first court ruling sanctioning a child's removal. Particular attention should be given to processes to document the judicial finding when the first ruling is a verbal order. During the onsite phase of this review there were numerous cases in which the judicial *contrary to welfare* finding was made in a verbal order sanctioning the removal of a child and documentation of that judicial finding was included in a subsequent written order. In some cases, however, the ruling was not affirmatively cited in the written order. Processes for more clearly and consistently documenting that an explicit judicial finding was made in a verbal order would assist eligibility staff in determining title IV-E eligibility for a child removed through a verbal order.

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.

AFDC Eligibility Determination: Title IV-E agencies must apply the AFDC eligibility requirements that were in place in the state's title IV-A plan on July 16, 1996. In considering income to determine financial eligibility, the state must: 1) apply a gross income test and 2)

compare countable income to the standard of need. The 2013 IV-E review identified a weakness in the state's process for determining a child's AFDC eligibility; the state had not been appropriately using the two-step process which required the reconstruction of AFDC eligibility in numerous cases. Pennsylvania subsequently implemented new eligibility worksheets to explicitly apply the two-step process and provided the appropriate training for county eligibility staff. During this review, cases included completed eligibility worksheets and the clearly documented forms CY60 & CY61 which demonstrated the application of the two-step process by county eligibility workers and thorough consideration of AFDC eligibility criteria.

Disallowance

A disallowance in the amount of \$31,900.33 in maintenance payments and \$8982.00 in related administrative costs of FFP is assessed for title IV-E foster care payments claimed for error cases. The total disallowance as a result of this IV-E review is \$40,882.33 in FFP.

Pennsylvania also must identify and repay any ineligible payments for the error that occurred for periods subsequent to the PUR. No future claims should be submitted on these cases until it is determined all eligibility requirements are met.

Next Steps

As part of Pennsylvania's ongoing efforts to improve its title IV-E foster care eligibility determination process, the Children's Bureau recommends Pennsylvania 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.

Keeping informed about current federal laws and regulations is necessary for Pennsylvania to ensure compliance with title IV-E eligibility requirements. It is also necessary to ensure that adequate case documentation and routine case maintenance are current for all eligibility requirements, including the requisite judicial findings. The CB Region 3 office will continue to provide technical assistance to Pennsylvania in these efforts.