

# **Texas Department of Family and Protective Services**

## **Primary Review**

### **Title IV-E Foster Care Eligibility**

#### **Report of Findings for**

**April 1, 2017 – September 30, 2017**

## **Introduction**

The Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of the Texas Department of Family and Protective Services' (DFPS) title IV-E foster care program. The title IV-E foster care review (IV-E Review) was conducted during the week of March 5, 2018 in collaboration with DFPS and was completed by a review team comprised of representatives from DFPS and Texas Juvenile Justice Department (TJJD), CB Central and Regional offices, ACF Regional Grants Management office, and the Choctaw and Cherokee Nations.

Key purposes of the IV-E Review are (1) to determine whether the Texas 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 April 1, 2017 – September 30, 2017. 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 the 80 cases from the original sample with no cases from the oversample.

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 was also reviewed 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 Texas agreed the state would have 2 weeks 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 73 of the 80 sample cases have met all eligibility requirements (i.e., are deemed non-error cases) for the PUR. Seven 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. One case was a non-error that met the eligibility requirements for the PUR but was found to have periods in the foster care episode for which title IV-E maintenance payments were improperly claimed.

The CB has determined the Texas title IV-E foster care program is not in substantial compliance for the PUR. Non-substantial compliance in a primary IV-E Review means the total number of error cases is more than four cases determined as not meeting eligibility requirements for the PUR. Additional findings for non-error cases with ineligible payments are not considered in determining the state’s review results of non-substantial compliance with federal requirements.

### **Case Summary**

The following charts record improper payment cases comprised of error cases and a non-error case 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 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:**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period April 1, 2017-September 30, 2017</b>	<b>Improper Payments (FFP)</b>
#15	State was not in compliance with its policy that addresses safety considerations with respect to staff in child care institutions. [45 CFR §1356.30 (f)]  Reported Disallowance Period: 06/27/2017 – 07/20/2017	\$1,555 Maintenance  \$773 Admin.
#41	State was not in compliance with its policy that addresses safety considerations with respect to staff in child care institutions. [45 CFR §1356.30 (f)]  Reported Disallowance Period: 09/01/2017 – 09/30/2017	\$2,789 Maintenance  \$773 Admin.
#55	State was not in compliance with its policy that addresses safety considerations with respect to staff in child care institutions. [45 CFR §1356.30 (f)]  Reported Disallowance Period: 06/01/2017 – 08/29/2017	\$2,791 Maintenance  \$2,320 Admin.
#57	Removal invalid for title IV-E as the child remained in the specified relative's home six days after the contrary to the welfare finding for removal. [CFR §1356.21(k)(2)]  Ineligible: Entire foster care episode Reported Disallowance Period: 07/19/17 – 1/31/18	\$1,607 Maintenance  \$4,640 Admin.
#66	Removal from and living with requirements were not met by the same specified relative. [§472(a)(1), (2)(A)(ii) and (3) of the Act and 45 CFR §§ 233.90 and 1356.21(k) & (l)]  Ineligible: Entire foster care episode Reported Disallowance Period: 03/12/2015 – 1/31/2018	\$ 12,857 Maintenance  \$26,663 Admin.
#73	State was not in compliance with its policy that addresses safety considerations with respect to staff in child care institutions. [45 CFR §1356.30 (f)]  Reported Disallowance Period: 01/02/2017 – 04/13/2017	\$10,337 Maintenance  \$2,320 Admin.

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period April 1, 2017-September 30, 2017</b>	<b>Improper Payments (FFP)</b>
# 80	State was not in compliance with its policy that addresses safety considerations with respect to staff in child care institutions. [45 CFR §1356.30 (f)]  Reported Disallowance Period: 05/10/2017 – 06/18/2017	\$2,592 Maintenance  \$1,547 Admin.

Error Total Maintenance FFP: \$34,528  
Error Total Administrative FFP: \$39,036  
**Error Total: \$73,564**

**Non-Error Cases with Ineligible Payments:**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period April 1, 2017-September 30, 2017</b>	<b>Improper Payments (FFP)</b>
#50	State was not in compliance with its policy that addresses safety considerations with respect to staff in child care institutions. [45 CFR §1356.30 (f)] Reported Disallowance Period: 10/01/2016 – 02/28/2017  Payments were made prior to the month of the contrary to the welfare and reasonable efforts to prevent removal judicial findings. [§472(a)2(ii) and 45 CFR §1356.21 (b), (c) & (d)] Reported Disallowance Period: 03/31/2016	\$4,407 Maintenance  \$3,866 Admin.  \$29 Maintenance

Non-Error Total Maintenance FFP: \$4,436  
Non-Error Total Administrative FFP: \$3,866  
**Non-Error Total: \$8,302**

**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 (#66) in which DFPS did not 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 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 the grandmother’s home. The DFPS 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 the grandmother for greater than 6 months. In sum, the “removal from” requirement was met by the mother’s home and the “living with” requirement was met by the grandmother’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.

**Recommendations to address case error:** The DFPS 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 previous IV-E Reviews (2009, 2012, 2015) the state had similar errors as in the 2018 review 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.

A supporting strategy DFPS should consider is to incorporate into its automated 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 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, DFPS should consider revising the question which is currently in its eligibility module that 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 specialists 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-16-05, which clarifies that the purpose of the CIP grant includes addressing concerns identified in the IV-E Review process.

**Issue # 2: *Safety requirement for children in child care institutions:*** Six cases above had improper payments because of noncompliance with the state's requirement that addresses safety considerations with respect to the caregiving staff of child care institutions; therefore, this requirement is of concern because the licensing agency is not actively and consistently checking for verification.

Background record checks were not completed in compliance with Texas rule that addresses safety considerations with respect to staff in child care institutions. [Texas Administrative Code, Title 40, Part 19, Chapter 745 (March 2015)] There were five (5) error cases (#'s 15, 41, 55, 73, and 80) and one non error case (#50) with ineligible payments, in which criminal records checks were not completed or up-dated on child care institution staff in accordance with the state licensing standards during the period title IV-E foster care maintenance payments were made for a sample child placed in the child care institution. In three error cases (#'s 15, 73, and 80) and one case with ineligible payments (#50), the state's documentation showed there was missing or late follow up on the FBI criminal record check on the applicants. In three error cases (#'s 41, 55, and 73) renewals on either the state's Department of Public Safety or abuse and neglect registry checks were not up-dated according to the state licensing standard requirements during the period of the claiming of title IV-E funds for a sample child in placement. The Texas Administrative Code requires an initial background check for each person required to have a background check under §745.615 of the code and a renewed check within two years from the date of the most recently requested background check.

In addition to the disallowances for the sample cases listed above due to the missing or late background checks on facility staff, DFPS should make adjustments so that IV-E funding is not claimed for other children placed in the following facilities during the timeframes that the IV-E Review determined background checks are out of compliance.

- Bridgeway Home: April 12, 2017 to December 31, 2017
- Helping Hand Home for Children: January 1, 2017 to current
- High Plains Children's Home: June 1, 2017 to November 31, 2017

- High Sky Children’s Ranch: February 21, 2017 to current
- Sherwood-Myrtie Foster Home: October 1, 2016 to February 28, 2017
- Sunny Glen Children’s Home: September 1, 2017 to September 30, 2017

**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 requires states to set procedures that address safety considerations with respect to the caregiving staff of child care institutions. 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. The IV-E Review determines whether the state where the child is placed has complied with all of its own background check requirements for the period that covers the PUR. 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.

**Recommendations to address case errors:** The DFPS should augment its training, quality assurance system and automated edit checks 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 placement in a child care institution 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. The DFPS is reminded that title IV-E foster care maintenance payments may not be claimed before the agency establishes the child meets all eligibility requirements, including all safety requirements for the child’s placement. Furthermore, the agency should ensure it establishes clear policy and ticklers to address situations when there is no follow-up to obtaining fingerprint clearance on staff requiring such safety checks. The DFPS would benefit from developing such processes to ensure safety requirements are met for all mandated child care institution staff.

**Issue #3: *Eligibility is based on the month in which court proceedings are initiated.*** Initial eligibility was incorrectly based on the month of removal in 10 sample cases. The state was permitted to reconstruct eligibility for the month court proceeding were initiated by filing of a petition for case numbers 16, 19, 20, 28, 43, 49, 50, 72, 73, and 79.

**Title IV-E Requirement:** For title IV-E eligibility in accordance with federal requirements at §472(a)(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. (Please see ACYF-CB-PI-06-06 and CB Child Welfare Policy Manual, 8.4A, Question #21 for additional information.)

**Recommendations to address case issues:** In the above 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 month the court proceedings were initiated. Additional training is recommended to help eligibility specialists and QA staff understand how to determine the month the court proceeding were initiated. The eligibility module should be reviewed to determine if

questions can be added to instruct staff to review petitions and affidavits for filing dates in order to assess the month the court proceedings are initiated.

**Issue #4: *Invalid removal.*** In one sample case (#57) the child stayed in the specified relative's home for six days after the court sanctioned the child's removal and provided the required contrary to the welfare findings. Agency staff were unable to present any information related to the reason for the delayed removal.

**Title IV-E Requirement:** Consistent with 45 CFR § 1356.21(k)(2), a removal is not valid under title IV-E when the child is removed from a specified relative through a voluntary placement agreement or a court order and the child remains with that same specified relative in the home under the relative's responsibility and under the IV-E agency's supervision.

**Recommendations to address case error:** Procedures should be developed which support the review and comparison of the date of the contrary to the welfare findings to the date of the child's physical removal. The automated system could generate an alert if the removal is not by the end of the next business day, prompting the eligibility specialist to request documentation regarding the reasons for the delay. Training and policy guidance is recommended to help eligibility specialists and QA staff assess if extenuating circumstances may allow the child to be determined eligible for title IV-E in spite of the delayed removal. If there are no extenuating circumstances, such as the family absconding with the child and the agency's inability to locate the family in spite of active efforts, eligibility specialists should be instructed that the child is ineligible for title IV-E

**Issue #5: Additional Program Concern:** Reviewers noted agency affidavits to the court from some counties were less detailed regarding case circumstances which included: often not providing an extensive case history of the family and 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. Affidavits were not comprehensive, providing only minimal information as the foundation for the court to make important judicial determinations specific to the child's circumstances. It was noted that eligibility specialists rely on the affidavit as a source of information for many aspects of the eligibility determination related to AFDC factors. This highlights that the accuracy of the affidavit is a critical aspect of determining eligibility based on the correct information.

Affidavits are important sources of information regarding the circumstances in the home and the living situation of the child at the time of removal. Additionally, in Texas, courts frequently reference the affidavit and petition to support the required judicial findings. When the information in the affidavit is lacking or unclear it can bring into question whether the judicial determination is made on a case-by-case basis and child-specific. We recommend that DFPS identify required elements for affidavits and provide training to staff on expectations for required information to include in the affidavit.



## **Program Strengths and Promising Practices**

The following positive practices and processes of the state's title IV-E program were observed during the review.

**Safety Requirements for Foster Parents.** The review found that DFPS continues to have a good process for ensuring licensing requirements are met for all foster parents criminal background checks. DFPS engaged in a program improvement plan related to the requirements for safety requirements from the primary title IV-E review held in February 2012. The Child-Care Licensing Automation Support System (CLASS) system for tracking licensing and criminal records checks (CRC's) has the capacity to be effective in tracking the background check process for foster parents. This system supported the successful completion of the PIP in 2012 and remains successful in maintaining the state's compliance with foster parent safety requirements as evidenced by this review. The DFPS has maintained the improvements related to foster parent background checks to ensure child safety.

**Partnership with the Courts.** The review found that the DFPS 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. Texas CIP should be acknowledged for their continued efforts around training court personnel and providing bench cards to judges and attorneys that address best child welfare practices related to timeliness and court orders. The CIP provides specific topic training to support judges, attorneys, and other court staff to help ensure court orders are provided timely, documented with case specifics, contain the required judicial findings, and completed thoroughly to assist DFPS staff in determining eligibility. The DFPS should continue this ongoing partnership which ensures required findings are timely and present in all court orders.

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 \$34,528 in maintenance payments and \$39,036 in related administrative costs of FFP is assessed for title IV-E foster care payments that are claimed for error cases. Additional amounts of \$4,436 in maintenance payments and \$3,866 in related administrative costs are disallowed for title IV-E foster care payments claimed improperly for the one non-error case. The total disallowance as a result of this IV-E review is \$81,866 in FFP. Texas 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

Federal regulations at 45 CFR §1356.71(i) require the development of a Program Improvement Plan (PIP) when a state is found not in substantial compliance in a primary review of its title IV-E foster care program. The PIP must be developed by DFPS in consultation with CB staff and must address, at a minimum, each area the IV-E Review identified as needing improvement. DFPS is expected to work closely with the CB regional office for guidance and technical assistance throughout the PIP development and implementation processes.

The duration of the PIP is not to exceed 1 year unless the CB approves DFPS's request for a longer implementation period, as provided for under 45 CFR §1356.71(i)(1)(iii). The PIP must be submitted to the Children's Bureau Region 6 office within 90 calendar days from the date DFPS receives the disallowance notice of non-substantial compliance. The DFPS is requested to electronically submit its PIP documents to the CB regional office.

The PIP must include the following elements, as noted in federal regulations at 45 CFR §1356.71(i):

- specific goals for improvement
- action steps needed to correct each identified weakness or deficiency
- time frames for completing each action step

The CB does not require a state to use a particular format when developing its PIP. The PIP, however, must provide sufficient detail and context to ensure the CB regional office and DFPS staff can work in partnership to monitor the DFPS' progress in implementing and completing the PIP.

The CB is available to assist DFPS staff with the PIP process and has developed a standard template that is recommended for DFPS staff to use in preparing the PIP document for initial submission and for periodic reporting of progress to the CB regional office. The suggested template and instructions are attached to the final report and accompanying report letter.

The DFPS is strongly encouraged to use the PIP process to examine program deficiencies and develop measurable, sustainable strategies that target the root cause of problems preventing the DFPS from operating an accurate foster care eligibility program. The PIP planning and implementation process provides DFPS with an excellent opportunity to engage the judiciary, licensing agency, and other DFPS partners to develop strategies for making short-term and long-term changes necessary to improve DFPS performance and service delivery. DFPS also should use the PIP process to enhance its internal quality assurance procedures to inform and eventually evolve into a systematic mechanism for continuous program improvement that support systemic change and sustain successful performance achievements over time. The CB through its Region 6 office will work with DFPS staff to identify technical assistance needs and obtain assistance through our funded organizations to help DFPS develop and implement program improvement strategies.

The PIP development may necessitate making changes to your automated information systems. We encourage you to include DFPS data analysis staff and information technology

staff in discussions with program staff about modifications. If DFPS has an active information technology project that qualifies for title IV-E funding under federal regulations at 45 CFR §1355.52, the information technology changes made must be reported and approved through the process described in 45 CFR §1355.54.

A secondary review of 150 sample cases is conducted, in accordance with 45 CFR §1356.71(j)(2), following expiration of DFPS' approved PIP completion date.