DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
Administration on Children, Youth and Families
330 C Street, S.W.
Washington, D.C. 20201

JAN 29 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sheila J. Poole
Acting Commissioner
New York State Office of Children and Family Services
52 Washington Street
Rensselaer, New York 12144-2834

Dear Commissioner Poole:

The Children's Bureau, Administration for Children and Families (ACF), conducted a primary review of the New York State title IV-E foster care program during the week of September 14, 2015. The review protocol was implemented in accordance with federal provisions at part 45, section 1356.71 of the Code of Federal Regulations (45 CFR §1356.71). This letter transmits our report of final findings for this primary review and provides a summary of the findings.

The purposes of the title IV-E foster care review (IV-E review) were (1) to determine whether the state was in compliance with the eligibility requirements outlined in statute and regulations at section 472 of the Social Security Act, the Act, and 45 CFR §1356.71; and (2) to validate the basis of the state's financial claims to ensure appropriate payments were made on behalf of eligible children. A computerized statistical sample of 80 cases was reviewed by a team comprised of federal and state staff to determine the state's level of compliance in meeting federal eligibility requirements for the six-month period under review (PUR) of October 1, 2014-March 31, 2015.

I am pleased to inform you the Children's Bureau has determined your state's title IV-E foster care program is in substantial compliance with federal eligibility requirements for the PUR. Since your state is in substantial compliance, a secondary review of 150 cases is not required. Your next primary review will be held within three years.

The review team determined 78 of the 80 cases in the review sample met all eligibility requirements (i.e., were deemed non-error cases) for the PUR. Two cases were determined as in error either for periods only during the PUR or for the entire foster care episode. Although two cases were in error, this finding did not exceed the error threshold of four cases to meet substantial compliance in a primary review. Two non-error cases also were found to have periods in the foster care episode for which title IV-E maintenance payments were improperly claimed. The supplemental findings for non-error cases with ineligible payments were not considered in determining the state's level of compliance with federal requirements.

Federal funds claimed for title IV-E foster care maintenance payments and related administrative costs associated with error cases and non-error cases with ineligible payments, however, are being disallowed. Specific information about individual case findings is detailed in the enclosed report of review findings.

Disallowance Notice

This letter constitutes our formal notice of disallowance of $56,067 in foster care maintenance payments and related administrative costs for title IV-E funds claimed improperly for the error cases and non-error cases with ineligible payments.

Since the amount of disallowed funds was previously included in federal payments to the state, you must repay these funds by including prior periods of Foster Care decreasing adjustments on appropriate lines in Parts 1 and 2 of the Form CB-496. In the comment box in Part 2 of the form you must include a note that identifies the adjusted amount as being associated with a "IV-E Review" and include the date of this disallowance notice or the specific PUR covered by the review. Form CB-496 must be submitted within 30 days of the date of this notice to avoid an assessment of interest. The state must cease claiming title IV-E payments associated with the improperly paid cases until eligibility is substantiated for them.

Appeal Notice

This is the final decision of the Administration for Children and Families. It shall be the final decision of the Department of Health and Human Services unless you submit a written notice of appeal to the Departmental Appeals Board (DAB), in accordance with 45 CFR Part 16. Your written notice of appeal must be sent within 30 calendar days of receiving this decision from the Children's Bureau about the IV-E review finding and payment disallowance. Your notice of appeal must note you intend to appeal, give the amount in dispute, and briefly say why you think the IV-E review decision is incorrect. You must attach a copy of this decision to your notice of appeal. The DAB will notify you of further procedures.

A notice of appeal may be submitted to the DAB by mail, by facsimile (fax) if under 10 pages, or electronically using the DAB's electronic filing system (DAB E-File). Submissions are considered made on the date they are postmarked, sent by certified or registered mail, deposited with a commercial mail delivery service, faxed (where permitted), or successfully submitted via DAB E-File.

If you mail your notice of appeal, it should be addressed to:

U.S. Department of Health and Human Services
Departmental Appeals Board, MS 6127
Appellate Division
330 Independence Ave., SW
Cohen Building, Room G-644
Washington, D.C. 20201

If you fax your notice of appeal (permitted only if the appeal notice is under 10 pages), you should use the Appellate Division's fax number, (202) 565-0238.

If you use DAB E-File to submit your notice of appeal, you or your representative must first become a registered user by (1) clicking "Register" at the bottom of the DAB E-File homepage, https://dab.efile.hhs.gov/; (2) entering requested information on the "Register New Account" form; and (3) clicking the "Register Account" button. Once registered, you or your representative should (1) login to DAB E-File using the e-mail address and password provided during registration; (2) click "File New Appeal" on the menu; (3) click the "Appellate" button; and (4) provide and upload the requested information and documents on the "File New Appeal-Appellate Division" form. Detailed instructions can be found on the DAB E-File homepage.

When you submit your appeal to the DAB, you must send a copy to Alfonso Nicholas, the Child Welfare Regional Program Manager in Region 2 of the Children's Bureau.

Interest and Penalties

If you appeal, you may repay the amount at issue pending a decision by the DAB, or you may retain the funds pending that decision. If you repay the funds, an adjustment to return the disallowed funds to avoid an interest assessment must be submitted on the Form CB-496, as described above for payment adjustments. If you retain the funds and the DAB sustains all or part of the disallowance, interest and penalties will be charged on improperly paid funds in accordance with 45 CFR Part 30.18. Interest will accrue on the funds from the date of this disallowance letter to the date of repayment. The current interest rate is 10%.

I thank you and your staff for the efforts preparing for and participating with us in this IV-E review.

My staff looks forward to working with your agency to improve state implementation of federal requirements and to increase state capacity to deliver quality services to children and families. You may contact Alfonso Nicholas at alfonso.nicholas@acf.hhs.gov or (212)264-2890 extension 145 should you have questions about this review. Questions concerning the disallowance may be directed to Shari Brown, of the CB Regional Office at shari.brown@acf.hhs.gov or Boram Lee of the ACF Office of Grants Management at boram.lee@acf.hhs.gov.

Sincerely,

Rafael López,
Commissioner
Administration on Children, Youth and Families

Enclosure

cc: Susan Costello, Director of Financial Management, NYS OCFS; Rensselaer, NY
Alfonso Nicholas, Child Welfare Regional Program Manager; CB RO2; NY, NY
Gail Collins, Children's Bureau, Program Implementation Director; Washington, DC
Jennifer Butler-Hembree, Children's Bureau, Washington DC
Shari Brown, Children & Families Program Specialist; CB RO2; NY, NY
Boram Lee, Grants Management Specialist; OGM RO2; NY, NY

Final Report

State of New York
Subsequent Primary Review
Title IV-E Foster Care Eligibility

Report of Findings for
October 1, 2014 – March 31, 2015

Introduction

During the week of September 14, 2015 the Children's Bureau of the Administration for Children and Families conducted a subsequent primary review of the state's title IV-E foster care program. The title IV-E foster care review (IV-E review) was conducted in collaboration with New York State and was completed by a review team comprised of representatives from the state title IV-E agency, state court improvement program, CB Central and Regional Offices, ACF Regional Grants Management and cross-state peer reviewers.

The purposes of the IV-E review were (1) to determine whether the New York title IV-E foster care program is in compliance with the 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 were 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 was made for an activity that occurred in the six-month period under review (PUR) of October 1, 2014 - March 31, 2015. A computerized statistical sample of 100 cases (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 79 cases from the original sample plus one case from the oversample. One case (case sample #59) was excluded from the original sample because no title IV-E foster care maintenance payment was made for a period of activity during the PUR. The state provided documentation to support excluding this case from the review sample and replacing it with a case from the oversample.

Case sample #59 was excluded from the original sample and replaced with a case from the oversample. Discussions with New York State staff and an examination of case documentation confirmed elimination of case sample #59was necessary because a title IV-E maintenance payment was not made in the case for activities during the PUR. State agency officials indicated the case was incorrectly coded for the title IV-E maintenance instead of the correct funding source. New York State is reminded that the validity of the title IV-E review sample and oversample are dependent on the accuracy of the state's reporting of AFCARS foster care data element 59 (FC59). The Children's Bureau recommends the state continue to ensure a child's eligibility status and living arrangements are entered timely. Additionally, element 59 was found to be in non-compliance during the state's AFCARS Assessment Review. The agency's information system must properly identify changes in a child's eligibility status and any updates also must be completed in a timely manner. Without the correct information about the child's eligibility status and living arrangement and the system properly identifying changes in these, the extraction code cannot properly identify whether FC59 applied (code value 1) or did not apply (code value 0) at any point in the report period being extracted. Staff training and data monitoring should be conducted on an ongoing, regular basis to ensure the system accurately reflects the funding source for the child.

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 was reviewed to verify title IV-E eligibility. The foster care provider's record also was examined to ensure the foster family home or child care institution where the child resided during the PUR was fully licensed and met the safety requirements. Payments made on behalf of each child also were reviewed 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 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 date of an unallowable activity and title IV-E maintenance was paid for the unallowable activity in either situation. In addition, underpayments were identified for a sample case when 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 New York State agreed the state would have two weeks following the onsite review to submit additional documentation for two cases during the onsite review identified as errors. Supplement documentation was provided for sample cases #63 and #64. A review of the submitted documentation found these cases to be non-errors.

Compliance Finding

The review team determined 78 of the 80 cases met all eligibility requirements (i.e., were deemed non-error cases) for the PUR). Two cases were determined as in error for not meeting the eligibility requirements either for periods only during the PUR or for the entire foster care episode. Two non-error cases met eligibility requirements for the PUR but were found to have periods in the foster care episode for which title IV-E maintenance payments were improperly claimed.

The Children's Bureau has determined the New York State 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. The supplemental findings for non-error cases with ineligible payments were not considered in determining the state's level of compliance with federal requirements. 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 charts record the improper payment cases comprised of error cases, non-error cases with ineligible payments and underpayments; 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 applicable year(s) for each sample case.

Error Cases:

Sample Number	Improper Payment Reason & Ineligibility Period October 1, 2014 – March 31, 2015	Improper Payments (FFP)
#29	Judicial determination regarding the child's best interests was not made within the 180 days of the foster care placement through the Voluntary Placement Agreement as set forth in §§ 472 (d),(e) and (f) of the Act; 45 CFR § 1356.22 Ineligible: 10/05/2011-9/30/2014; 10/01/2014-11/20/2104	$28,163 Maint. **$21,808 Admin.**
#76	Foster care home was not fully licensed during the child's placement during a time within the PUR, as defined by §§ 472 (b) and (c) of the Act and 1356.71(d)(1)(iv) Ineligible: 10/17/2014-12/09/2014	$74 Maint. **$0** Admin

Total: **$28,237 Maint.**
$21,808 Admin.

Non-error Cases with Ineligible Payments:

Sample Number	Improper Payment Reason & Ineligibility Period October 1, 2014 – March 31, 2015	Improper Payments (FFP)
#6	Child placed in an unlicensed/unapproved foster family home as defined in §§472(b) and(c) of the Act and 45 CFR §1355.20(a) and 1356.71(d)(1)(iv) Ineligible: 04/04/2014-08/07/2014	$3,625 Maint. $2,323 Admin.
#30	Title IV-E maintenance payment made for the foster care placement for the same time the foster child was in respite care. Ineligible: 06/06/2013-06/09/2013	$74 Maint. $0 Admin.

Total: $3,699 Maint.
$2,323 Admin.

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: Timeliness of judicial determination regarding the child's best interests within 180 days of foster care placement through a voluntary agreement. Case sample #29 was an error and had ineligible payments because the judicial requirement regarding the child's best interests was not met timely. New York State incorporated into its policy the federal requirement for a judicial determination of the child's best interests within 180 days of the foster care placement through a voluntary agreement. The state's mandate stipulates title IV-E reimbursement is available only if within 180 days of placement, the Family Court has determined that continued foster care is in the child's best interest and there is a court order that awards care and custody or care and guardianship to the local social services' district commissioner. In this error case, the requisite judicial determination was not made until 18 days following the 180 days of placement.

Title IV-E Requirement: Section 472(f) of the Act allows the use of federal financial participation for an eligible child who is removed from home according to a voluntary placement agreement. For continuing eligibility of the child voluntarily placed, there must be a judicial determination within 180 days to the effect that the placement is in the best interests of the child [§472(e) of the Act and 45 CFR §1356.22(b)]. If more than 180 days of the child's placement in foster care have elapsed and there has been no judicial determination of "best interests," the child's title IV-E eligibility for the foster care episode ceases on the 181st day. Title IV-E eligibility also ceases for the remainder of the foster care episode when the title IV-E agency fails to obtain the requisite judicial determination within the first 180 days. New York State failed to meet the timeliness requirement for the voluntary placement program and is ineligible for continued federal reimbursement for the remainder of the child's foster care episode.

Recommended Corrective Action: New York State should continue to develop and implement procedures to ensure timely judicial determinations regarding the child's best interests within 180 days of the foster care placement through voluntary placement agreements. The accuracy and reliability of eligibility determinations generally are increased through training of the judiciary and court officials to correct delays in judicial determinations as well as to secure court orders that reflect title IV-E criteria on legal authority and best interests. Staff training will help to ensure workers make eligibility decisions based on the correct elements needed for compliance and to eliminate the authorization of payments prior to establishing compliance with requirements. In addition, the Children's Bureau suggests the state put in place a quality assurance system to monitor accuracy of eligibility determination and claiming processes.

Issue #2: Placement in Licensed Foster Care Home. Case Sample #76 was an error because the foster family home did not meet the standards for full licensure or approval as established by the State. In non-error case sample #6 payments were ineligible because the child was placed in unlicensed/uncertified home for a period outside the period under review.

Title IV-E Requirement: As required by 45 CFR §1355.20 and §472 (c) of the Act, the term "foster family home" means a foster family home for children which is licensed by the state in which it is situated or has been approved, by the agency of such state having responsibility for licensing homes of this type, as meeting the standards established for such licensing. The regulation at 45 CFR 1355.20(a) further dictates that anything less than full licensure or approval is insufficient for meeting title IV-E eligibility requirements. Therefore, the child must be placed in a foster family home that has been fully licensed or approved by the state licensing agency in order for the child to qualify for title IV-E eligibility

and compliance with the requirement must be documented before title IV-E foster care maintenance payments are claimed for an otherwise eligible child.

Recommended Corrective Action: The state must ensure that the child's foster care placement is fully licensed as required by state policy. In addition, we encourage the state to establish a standard procedure to monitor foster care providers to ensure that they meet licensing standards. The monitoring should ensure that local agencies adhere to licensing procedures, gaps in licensing do not occur, requirements for renewal are being met on a consistent and timely basis, and licensing decisions are documented. Internal fiscal controls also must be implemented to prevent title IV-E claiming for a period in which all the eligibility criteria have not been fully completed and documented.

Issue #3: Unallowable program cost. In non-error case #30, foster care maintenance payments were ineligible. The ineligible payment consisted of the duplication of a foster care maintenance payment that was made for the foster care parent for the same dates the child was in respite care. Foster care maintenance payments cannot be made to two providers for the same child and for the same period of time.

Title IV-E Requirement: Section 472(b) of the Act allows the use of federal financial participation for an eligible child who is removed from the home of a specified relative. Consistent with federal provisions at 45 CFR 1356.60(a)(1)(i), claiming of foster care maintenance payment is limited to the cost of providing certain expenditures covered within the federal definition of foster care maintenance at §475(4) of the Act. The state must document foster care maintenance payments claimed for title IV-E reimbursement are for allowable expenditures in accordance with the federal statutory definition and reflect non-duplicative amounts of the costs of daily maintenance.

Recommended Corrective Action: The state must reviews its payment system to determine whether adequate financial controls and edits are in place and are properly functioning to prevent payments of unallowable program cost. In addition, fiscal controls must be implemented to prevent duplicate payments.

Additional Areas of Concern:

Financial payment reporting. The state should review its capability to generate accurate and timely reports of all financial claims for the title IV-E Foster Care program to ensure that only eligible claims are being entered. A financial reporting system that would allow for the creation of specific and custom financial reports would be useful, especially with an automated capability to break out maintenance and administrative costs by state and federal amounts. During the title IV-E review, the financial payments reports that were provided to the review team required numerous revisions and modifications by the state to ensure that accurate and complete financial payment information was being presented to the review team. A capability to generate automated overview reports by county or by individual case sample would be helpful. In addition, the capability to have the financial payment reports accurately report the vendor identification numbers and/or recipient identification would be an improvement. During the review, it was noted that there were numerous instances where the reported vendor or payment recipient on the financial payments report was not the accurate vendor. ACF financial specialists determined that the state's documents on vendors and payment recipients did not match and the state subsequently provided additional material to clarify the discrepancies.

Standardization of Benefits Issuance and Control System (BICS) codes. The state should review and revise its BICS Services Payment Processing Manual to include additional information on what each "purchase service type code" entails to increase standardization across all New York State counties. This will help ensure that each county is using the appropriate code for only eligible claims. Currently, each county has its own definitions and practice of using the various service type codes for some eligible

claims. During the review, we noted that the lack of standardization of BICS service type code made it difficult to ascertain what activity was being attributed to a code, as the code definition varied from county to county. As a state-supervised, county-administered Foster Care program, having standardized BICS codes would allow the state to more accurately oversee the activity of each individual county to ensure only eligible activities are being claimed.

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.

Judicial Determinations. The Children's Bureau noted the continued collaborative efforts between the Office of Children and Family Services and the New York State Office of Court Administration. This seems to have contributed, in general, to timely judicial determinations and comprehensive documentation of court findings.

Most court orders contained detailed, child-specific information and clear enunciation of judicial expectations for actions to achieve the desired permanency outcomes. We also noted the court orders addressed the Indian Child Welfare Act requirements for children's affiliation to Native American or tribal groups. The focus of encouraging all jurisdictions to utilize the standardized court orders statewide as a guide for court personnel continues to minimize the omissions of pertinent information.

The New York State Permanency legislation continues to have a positive impact on timeliness of judicial determinations of reasonable efforts to finalize the permanency plan for children who are in the New York State child welfare foster care program. This legislation requires permanency hearings to be held every six months to increase the timeliness of judicial determinations to finalize permanency plans.

Disallowances

A disallowance in the amount of $28,237 in maintenance payments and $21,808 in related administrative costs of FFP is assessed for title IV-E foster care payments claimed for error cases. Additional amounts of $3,699 in maintenance payments and $2,323 in related administrative costs of FFP are disallowed for title IV-E foster care payments claimed improperly for non-error cases. The total disallowance as a result of this IV-E review is $56,067 in FFP.

New York State also must identify and repay any ineligible payments for the error and non-error cases 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 the state's ongoing efforts to improve its title IV-E foster care eligibility determination process, the Children's Bureau recommends New York State 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 Region 2 Office staff is available to assist the state in identifying corrective measures to help the state address issues and concerns raised during this IV-E review.