

OFFICE OF CHILDREN AND FAMILY SERVICES

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| LOCAL COMMISSIONERS MEMORANDUM |
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OCFS-4616EL (Rev. 11/98)

Transmittal No: 99 OCFS LCM-7

Date: March 17, 1999

Division: Administration

TO: Local District Commissioners

SUBJECT: . TITLE IV-E Pilot Review Results, Proposed
Revision In Rule Making (NPRM) for title IV-E
and Program Improvement Plan

ATTACHMENTS: . Title IV-E Review Instrument and Guidelines
(not available on-line)

I. PURPOSE

The purpose of this memorandum is to inform social services districts of:

1. the recently completed Title IV-E pilot review; and
2. the corrective action proposal that the Office of Children and Family Services (OCFS) is developing to address the Title IV-E eligibility documentation issues raised in the pilot review.

This LCM continues a series of releases addressing Title IV-E requirements that must be met by social services districts prior to claiming federal participation. We have previously released 97 LCM-38 and 98 LCM-8 which emphasized the need to fully document Title IV-E eligibility and changes made to that criteria by the passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PROWRA). Social services districts were advised of the Title IV-E pilot review in 98 OCFS LCM-7.

II. THE TITLE IV-E PILOT REVIEW.

OCFS participated with social services staff and representatives from the federal Agency for Children and Families (ACF) in a pilot review of two 50 case samples, one from New York City and one from social services

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districts from the remainder of the State. Attachment 1 is a copy of the review instrument and guidelines for completing it which was used in the review.

The case reviews were done during the week of September 14 at the OCFS office in Rensselaer. Social services districts were advised of the preliminary results for case(s) drawn from their district. This Office has asked affected social services districts to submit additional materials for cases where one or more items of eligibility documentation for the case or the facility providing care was missing.

A. Federal Audit Protocol.

The most significant messages derived from the pilot review and the themes of this LCM are that:

| Social services districts are responsible for fully complying with and documenting all aspects of Title IV-E eligibility before federal reimbursement is claimed.

| Social services districts must maintain the documentation in a manner that facilitates retrieval and submission for audit purposes in a relatively short period of time. The failure to submit appropriate documentation in a timely manner will result in findings of ineligibility.

| Enhanced compliance with Title IV-E documentation standards will require a concerted and collaborative effort on the part of OCFS, local social services districts and local family courts to assure that the underlying case circumstances meet Title IV-E requirements.

The federal agency has released a notice of proposed rule making (NPRM) which proposes revisions in the Title IV-E review procedures among other issues. Once the regulations are made final, this Office will discuss the specifics and the requirements in a separate release. To the extent feasible, the provisions of the NPRM affecting IV-E eligibility were incorporated in the pilot review. Reflecting past review practices as well as the NPRM criteria, the pilot review envisioned a 10% ineligibility tolerance level, i.e. 90% of cases or payments must be found eligible in order for the State and its social services districts to be found in substantial compliance. The results of the pilot review are significantly below the tolerance level for both New York City's Administration for Children Services and for districts in the remainder of the State.

The pilot review process required local districts to submit documentation to OCFS in Rensselaer which was a burdensome procedure. OCFS is attempting to relieve pressures in future reviews by requesting ACF to provide a longer period of notice to assemble documentation and to allow for local review sites.

As in the past, during the pilot review ACF only accepts computer generated data in lieu of original sources when the computer system providing the data has been determined to meet ACF standards. As an example, ACF has not accepted printouts from the Child Care Review System (CCRS) as sufficient documentation of provider eligibility (certification). A copy of the certificate is required. However, ACF has accepted certain Welfare Management System (WMS) generated printouts as documentation that the child was in receipt of ADC in the month placement was initiated.

Social services districts are reminded that the absence of or failure to document ADC eligibility, removal or best interest determinations at the time of placement results in loss of Title IV-E for the entire length of the foster care stay. For other aspects of eligibility, such as care and custody awards, Title IV-E eligibility can be gained or lost as legal authority is obtained or lost during the course of the placement. For all aspects of documentation, each item of eligibility is met as of the first day of the month the documentation for the criteria is established.

B. The Pilot Review Findings.

The following discussion presents the results of the pilot review by type of exception including a description of the criteria currently applicable to that finding.

1. Mandated Court Order Language.

There are two court order language requirements necessary to meet Title IV-E eligibility. Each must be stated in the court order.

a. Best Interests of the Child.

The order removing the child from his or her home and resulting in foster care must state that the child's 'best interests' are met by the removal from the home. ACF has accepted variations in the phrasing of this determination requirement, including: 'the child is in imminent risk'; 'it is contrary to the welfare of the child to remain in his or her home' and 'the child requires placement'. The determination must be made no later than at the full adjudication hearing or within 6 months of placement or Title IV-E is forfeited for the entire placement. Fifty percent of the cases reviewed during the pilot have initially been found ineligible because the applicable court order did not document that this determination had been made by the court. In many cases this error resulted because the best interest determination language of the formatted orders provided by the Office of Court Administration (OCA) had not been properly reviewed and edited.

b. Reasonable Efforts Determinations

The second mandate pursuant to ACF's interpretation of current regulations is that the court must determine and state in the order that one of the following three conditions exist: (i) the social services district made reasonable efforts to avoid the placement, or; (ii) once the placement has occurred, the district made

reasonable efforts to reunify the child with his/her family, or (iii) that reasonable efforts were not appropriate for the case under review. ACF's interpretation of the Social Security Act provides that once the court has made one of the three determinations, Title IV-E for this requirement has been established for the remainder of the placement. This interpretation has provided some flexibility in meeting this requirement as Title IV-E is not forfeited for the entire placement when the determination was not made in an initial order. Even so, 54% of the sampled cases have not met this test. As in the best interests determinations, the major reason for this error was that the formatted orders provided by OCA had not been reviewed and edited to reflect whether the appropriate determination had been made.

2. Legal Authority for Placement.

Under Title IV-E, all foster care placements must have the care and custody of the child awarded to the Commissioner of social services, or the Commissioner of the OCFS or an agency with whom OCFS has a Memorandum of Understanding (MOU) delegating the authority to be given care and custody awards to that agency for purposes of Title IV-E. Care and custody can be provided through a court order under Article 3, 7, or 10 of the Family Court Act (FCA) or by the execution of a voluntary placement agreement signed by a parent or legal guardian. A voluntary placement agreement is valid for purposes of Title IV-E eligibility for the first 180 days of placement. In order to continue Title IV-E eligibility after the 180th day of placement, the voluntary placement agreement must be approved by a court by day 180 of the placement. Voluntary surrender agreements are not valid for purposes of making foster care placements and the initial award of care and custody for purposes of Title IV-E eligibility and claiming. Similarly, voluntary placement agreements signed by persons other than the parent(s) or legally appointed guardians are not valid for purposes of Title IV-E eligibility or claiming. Once initial eligibility is established, the commissioner must maintain court order authority for the child's care and custody for the entire period of the placement in order to maintain eligibility for Title IV-E funding. Forty-four percent of the cases reviewed have not established that care and custody was awarded to the commissioner for the period under review, October 1995 through March 1996. Often the error has been the result of the inability to produce the applicable court order for review rather than a failure to secure the order in the first instance.

3. Documentation of Aid to Dependent Children (ADC) Eligibility

Social services districts were advised in 98 LCM-8 that PROWRA continued the link between Title IV-E eligibility and the eligibility criteria for the former ADC Program. For all placements occurring after the enactment of PROWRA, eligibility is to be determined using the State's ADC standards in effect as of July 16, 1996. The standards for ADC remained unchanged in New York until State Welfare reform legislation enacting the Temporary Assistance to Needy Families (TANF) program became effective on November 1, 1997. For placements occurring after that date, social service districts were advised of what steps need to be taken to assure appropriate documentation of the required ADC criteria for the purpose of establishing Title IV-E eligibility.

Although the pilot review focused on cases coming into care prior to implementation of the PROWRA changes, 41% of the cases failed to document ADC criteria that was in effect at the time the child was placed. OCFS will continue to work with local social services districts in securing the required ADC related documentation wherever possible on the sample cases. However, the pilot results are instructive as to the necessity to secure and retain documentation of the required ADC related criteria in the case record for the entire duration of the placement.

In view of the frequently changing criteria and circumstances affecting budgeting in Temporary and Disability Assistance cases we are amending our advice to social service districts regarding ADC budgeting for cases coming into foster care from households receiving TANF funding. We are now advising social services districts to do budget calculations using the July 16, 1996 standards for ADC even if the TANF case the child received assistance in had no earned income in its budget. All other instructions in 98 LCM-8 remain unchanged.

4. Removal of the Child from the Home

The documentation of this requirement has been problematic for a child placed in a kinship foster home which was the same home where the child had been residing prior to the start of the child's foster care placement. To be eligible for Title IV-E funds, the child has to be removed from the home of an eligible relative. ACF has interpreted this as requiring that the child be physically removed from one address and placed in a different address in order for the removal criteria to be met. Case records have not always clearly documented the child's living arrangement at the time of the removal. Failure to document the living arrangements translated into a failure of the Title IV-E removal test. In the pilot review 3% of the cases failed to document that removal had occurred.

5. Provider Eligibility

In order for a foster care payment to be eligible for Title IV-E claiming, the provider must be certified or approved as a foster care provider under the relevant State criteria. As noted earlier, ACF is unwilling to accept anything but the certification(s) or approval letter(s) covering the period under review. Forty-six percent of the pilot review cases lack documentation of the foster home's approval or certification.

III. The Program Improvement Plan

As noted earlier, ACF has released an NPRM which, if made final, revises the eligibility and documentation requirements for Title IV-E claiming as set forth in 45 CFR 1356. In almost every area proposed in the NPRM the criteria is to be more stringent. When the proposed rules are made final, OCFS will issue a separate LCM discussing the changes in Title IV-E eligibility and claiming requirements.

However, the pilot review process affords us the opportunity to work together to develop a program improvement plan to increase the number of cases that meet the current Title IV-E eligibility criteria. The plan

should focus on specific activities for achieving outcomes in a short time frame that will help districts secure the required Title IV-E documentation prior to filing claims. As one of the first steps in developing this plan, we ask that each social services district review their Title IV-E eligibility determination and claiming processes in light of the types of errors found in the pilot review. We also ask that you provide us with a brief synopsis of your processes, including any checklists, review schedules other than State provided forms, or related internal controls that you use. This information will be useful in our work with you in developing the details of our plan and will form a foundation for sharing best practices with other social services districts.

OCFS also will discuss the proposed plan with ACF and ask for their participation and support. OCFS looks forward to working with your staff and with staff of the State and local court systems, the New York Public Welfare Association, the New York State Association of Counties and other interested parties. We believe these efforts will improve our compliance with the current Title IV-E criteria by developing better procedures and sharing best practices already developed by social services districts. Where possible, these practices would be the foundation for implementing any additional procedures needed to comply with the new federal requirements once the proposed regulations are finalized. It is expected that some of the new federal requirements will expand best practices. Therefore, we hope all of the social services districts will participate in defining the new procedures.

Please designate staff from your program, legal and/or fiscal areas to be a contact(s) and to participate in efforts to develop the plan. Please advise us of your designee(s) by contacting Mr. John Murray (User ID AY4310) at (518) 474-0131 or Mr. John Conboy (User ID 90b061) at (518) 402-0147.

Melvin I. Rosenblat
Deputy Commissioner for Administration