

**New York State  
Office of Children and Family Services  
Primary Review  
Title IV-E Foster Care Eligibility**

**Report of Findings for  
October 1, 2017-March 31, 2018**

## **Introduction**

During the week of September 17, 2018, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary eligibility review of New York's title IV-E foster care program. The review was conducted in collaboration with the New York Office of Children and Family Services (OCFS) and was completed by a review team comprised of representatives from OCFS, CB Central Office, and Region II staff, ACF Regional Grants Management staff and two peer reviewers from other states. The purposes of the title IV-E foster care eligibility review were (1) to determine whether New York's title IV-E foster care program was 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 New York's financial claims to ensure that appropriate payments were made on behalf of eligible children.

## **Scope of the Review**

During the review, the review team examined a sample of New York's foster care cases that received a title IV-E maintenance payment for a period during the six-month period under review (PUR) of October 1, 2017 – March 31, 2018. A computerized statistical sample of one hundred (100) cases (eighty cases plus twenty over sample cases) was drawn from state data submitted to the Adoption and Foster Care Analysis Reporting System (AFCARS). Prior to the on-site review, seven (7) cases from the original sample were eliminated after it was determined that title IV-E payments were not made for a period during the PUR. The state provided documentation to support excluding these cases from the review sample and replacing them with cases in the oversample.

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) 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; 45 CFR §1355.20(a) and §1356.71(d)(1)(iv); and
- Safety requirements for the child's foster care placement as required at §472(a)(20)(A) and 45 CFR §1356.30

The title IV-E eligibility case files of each child in the selected sample were reviewed to verify title IV-E eligibility. The foster care provider's documentation, which was included in the eligibility case file also was examined to ensure the foster family home or child care institution where the child was placed during the PUR was licensed or approved and that safety requirements in accordance with state law(s) were appropriately documented. Payments made on behalf of each child also were reviewed to verify that expenditures were allowable under title IV-E and to identify underpayments that were 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 claimed. A sample case was cited as non-error with ineligible payment when a title IV-E payment was made on behalf of a child who was not eligible on the date the payment was made outside the PUR or the child was eligible during the PUR, but an unallowable activity was paid using title IV-E maintenance funds.

### **Compliance Finding**

The Children's Bureau and OCFS agreed that the state would have two week(s) following the onsite review to submit additional documentation for a case during the onsite review identified as improperly paid. On September 26, 2018, OCFS notified CB that there was no additional information that would eliminate the two errors cases.

The review team determined that 78 of the 80 cases reviewed met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Two (2) cases were determined as in error for either part or all of the PUR and seven (7) non-error cases were ineligible for federal funding for a period of claiming outside of the PUR. In addition, underpayments were identified in five (5) cases when an allowable title IV-E maintenance payment could have been claimed by the state for an eligible child but was not claimed.

Based on the review findings, the Children's Bureau has determined that New York's title IV-E foster care program is in substantial compliance with federal eligibility requirements for the PUR. Substantial compliance in a primary review is achieved when there are fewer than five (5) error cases during the PUR. 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.

The following charts record the error cases; non-error cases with ineligible payments; underpayments; reasons for the improper payments; improper payment amounts; and federal provisions for which the state did not meet the compliance mandates.

## Case Record Summary

### Error Cases

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period October 1, 2017- March 31, 2018</b>	<b>Improper Payments (FFP)</b>
#20	Foster family home was not fully licensed. [§ 472(b) and (c) of the Act; 45 CFR §§1355.20 and 1356.71(d)(1)(iv)]  Ineligible Payment Period: 09/27/2017-10/10/2017	Maintenance: \$389
#74	Foster family home was not fully licensed. [§ 472(b) and (c) of the Act; 45 CFR §§1355.20 and 1356.71(d)(1)(iv)] Safety Requirements were not completed on the foster parent. [ § 471(a)(20) of the Act; §§ 45 CFR 1355.20. 1356.30, and 1356.71 (d)(1)(iv)]  Ineligible Payment Period: 02/24/2018- 04/17/2018	Maintenance: \$525  Admin: \$1,253

Total Maintenance FFP: \$914  
Total Administration FFP: \$1,253

### Non-Error Cases with Ineligible Payments

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period October 1, 2017- March 31, 2018</b>	<b>Improper Payments (FFP)</b>
#7	Foster care maintenance payment made for clothing the month prior to the judicial determination regarding contrary to the welfare requirement was met. [§§471 (a)(15)(B) and 472 (a)(2) of the Act; 45 CFR §§1356.21 (b), (c) & (d)]  Ineligible Payment Period: 02/24/2016	Maintenance: \$75
#40	Foster family home was not fully licensed. [§ 472(b) and (c) of the Act; 45 CFR §§1355.20 and 1356.71(d)(1)(iv)]  Ineligible Payment Period: 05/17/2017	Maintenance: \$50
#48	Foster family home was not fully licensed. [§ 472(b) and (c) of the Act; 45 CFR §§1355.20 and 1356.71(d)(1)(iv)]  Ineligible Payment Period: 09/08/2016 - 10/31/2016	Maintenance: \$500

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period October 1, 2017- March 31, 2018</b>	<b>Improper Payments (FFP)</b>
#61	Foster care maintenance payment claimed twice for the same activity and activity dates. The child was eligible under title IV-E for non-duplicative services. [§475(4) of the Act; 45 CFR 1356.60(a)(1)(i)]  Ineligible Payment Period: 11/20/2017- 11/27/2017	Maintenance: \$67
#69	Foster care (FC) maintenance payment made for period prior to month of judicial finding of reasonable efforts to prevent removal. The child was removed on 08/24/2014 with a judicial finding of contrary to the welfare. The reasonable efforts to prevent removal requirement was met 09/05/2014.  Ineligible Payment Period: 08/28/2014 – 08/31/2014	Maintenance: \$37
#72	Foster family home was not fully licensed. [§ 472(b) and (c) of the Act; 45 CFR §§1355.20 and 1356.71(d)(1)(iv)]  Ineligible Payment Period: 04/21/2017 – 05/04/2017	Maintenance: \$318
#OS3	Foster care maintenance payment made for period prior to month of the judicial findings of contrary to the welfare and reasonable efforts to prevent removal. The child was removed on 06/28/2015. The judicial findings of contrary to welfare and reasonable efforts to prevent removal were met on 07/02/2015. [§§471 (a)(15)(B) and 472 (a)(2) of the Act; 45 CFR §§1356.21 (b), (c) & (d)]  Ineligible Payment Period: 06/28/2015- 06/30/2015;  Foster care maintenance claimed for a gift. Ineligible Payment Period: 12/10/2016	Maintenance: \$78       Maintenance: \$54

Total Maintenance FFP: \$1, 179

**Underpayments**

<b>Sample Number</b>	<b>Improper Payments Reason &amp; Ineligibility Period October 1, 2017- March 31, 2018</b>	<b>Improper Payments (FFP)</b>
#17	Childcare institution safety requirements were met for the caregiver staff of the instruction. No title IV-E payments were claimed by the state title IV-E agency for the period of the child's placement. [ § 471(a)(20) of the Act; §§ 45 CFR 1355.20. 1356.30, and 1356.71 (d)(1)(iv)]	Maintenance: \$8,900

Sample Number	Improper Payments Reason & Ineligibility Period October 1, 2017- March 31, 2018	Improper Payments (FFP)
	Eligible Payment Period: 09/20/2017 -11/01/2017	
#25	Foster care maintenance requirements were met beginning on 10/05/2017, in the month court proceedings were initiated for the child’s removal. No title IV-E payments were claimed by the state title IV-E agency for the first two months of eligibility. [§§471 (a)(15)(B) and 472 (a)(2) of the Act; 45 CFR §§1356.21 (b), (c) & (d)]  Eligible Payment Period: 10/01/2017-12/6/2017	Maintenance: \$930
#53	The child continuously met eligibility since 05/05/2016. No title IV-E were claimed by the state title IV-E agency. [§ 472(b) and (c) of the Act; 45 CFR §§1355.20 and 1356.71(d)(1)(iv)]  Eligible Payment Period: 05/05/2016- 08/14/2017	Maintenance: \$24,332
#61	Foster care maintenance payments were not claimed for the first 8 days of the child’s placement in a foster family home that met the licensing and safety requirements for the entire month. [§ 472(b) and (c) of the Act; 45 CFR §§1355.20 and 1356.71(d)(1)(iv)]  Eligible Payment Period: 11/01/2017-11/08/2017	Maintenance: \$67
#62	Foster care maintenance payments were not claimed for the first 4 months of the eligible child’s placement in a foster family home that met the licensing and safety requirement for the entire period. [§ 472(b) and (c) of the Act; 45 CFR §§1355.20 and 1356.71(d)(1)(iv)]  Eligible Payment Period: 12/01/2017- 04/30/2018	Maintenance: \$1,204

### Areas in Need of 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: Foster Family Homes and Safety Requirements**

In error cases # 20 and #74, and non-error cases #40, #48 and #72 foster care maintenance payments were claimed for the period a child was placed with an unlicensed foster family provider. Also in error case #74, the safety requirements were not completed for the foster family provider. The state claimed title IV-E for the period prior to the home meeting the licensing or safety requirements to become fully licensed as a foster family home.

It is the state policy that the foster home in which the child is placed must be fully certified, approved or licensed. Once the foster home is fully certified or fully approved, the child's eligibility case must contain: (1) a copy of the CONNECTIONS certificate to board children or approval letter indicating that the foster care facility has been fully certified or approved for the duration of the child's foster care placement; (2) the criminal history record summary and fingerprinting results letter and safety assessments where there was a result other than "no record" for all household members 18 years of age and older; (3) result of the State Central Register data-base check; and (4) clearance result of the Staff Exclusion List.

**Title IV-E Requirement:** Federal provisions at §§472(b) and (c) of the Act and 45 CFR §§1356.71(d)(1)(iv) and 1355.20 permit FFP for the costs of foster care maintenance for otherwise eligible children placed in licensed or approved foster family homes or childcare institutions. These federal provisions require the child's foster care setting be fully licensed or approved in accordance with the state's licensing standards where the foster family home is located and before title IV-E foster care maintenance payments are claimed on behalf of a child placed in the foster family home or childcare institution.

Further, §471 (a)(20)(A) of the Act require the state to conduct criminal background checks, including fingerprint-based checks of the national crime information databases, as a condition of licensure for prospective foster parents. Title IV-E foster care maintenance payment may be paid on behalf of an otherwise eligible child only once the criminal records check has been completed, the records reveal that the parents did not commit any prohibited felonies in §471 (a)(20)(A)(i) and (ii) of the Act, and the foster family home is fully licensed.

**Recommended Corrective Action:** The state should continue to ensure that staff is fully trained and understand that all state licensing criteria must be met prior to claiming title IV-E maintenance payments on behalf of a child placed in the foster care setting. As noted in the 2011 and 2015 title IV-E Review reports, implementing quality assurance reviews of foster family home licensing records would assist in identifying any lapses in the necessary licensing documentation and background checks for foster family providers. The state should also include in its title IV-E eligibility determination process elements to review for licensing and safety documentation and to prevent title IV-E claiming when one of these licensing requirements is not met. These measures also will reduce placing children at risk in unlicensed foster care homes.

## **Issue #2: Underpayments and Overpayments**

In sample cases #17, #53, # 61, and #62, the state did not claim title IV-E funds for the first months of the eligible child's placement in a foster family home that met the licensing and safety requirements for the entire period. Many of the underpayments were the result of internal systemic issues. For example, when payment authorizations were entered in the state Welfare Management System (WMS) by staff, payments were incorrectly posted to other funding sources. The WMS is a system which receives, maintains and processes information for on persons who have applied for or been determined eligible for benefits under New York's social service programs. Sample case #61 was improperly paid due to a data entry error. The state explained the casework intended to cancel the regular service payment for an incorrect period of 11/01/2017 – 11/08/2017, which created an underpayment as well as a duplicate payment for the same month. We recommend the state implement a quality assurance process that monitors and ensures data quality.

In sample cases #7 and #OS3, the state improperly claimed the title IV-E foster care maintenance payment for the month prior to the judicial determination regarding contrary to the welfare and/or reasonable efforts to prevent removal. Payments claimed for these periods are ineligible.

**Title IV-E Requirement:** Title IV-E maintenance payments may not be claimed before the month an eligibility requirement is met for a child, including the provider licensing or safety requirement. Under §472 of the Act and CB policy issuance ACYF-CB-PIQ-91-05, title IV-E maintenance payments may be claimed from the first day of the foster care placement in the month in which all title IV-E eligibility criteria are met. In addition, federal provisions at 45 CFR 1356.60 (a)(1)(i) permits title IV-E foster care payments for the cost of providing certain expenditures covered within the federal definition of foster care maintenance at section 475 (4) of the Act. The CB Child Welfare Policy Manual at section 8.3.B.1 provides additional guidance around qualifying expenditures covered under the title IV-E program.

**Recommended Corrective Action:** The state must review its payment systems to determine whether adequate financial controls and edits are in place and properly functioning to ensure correct payments for allowable program costs for eligible children. In addition, staff should be trained on payment codes and when payments can be claimed. A quality assurance process would help to reduce or eliminate underpayments and increase the state's ability to maximize reimbursements for allowable costs of care for eligible children by using funding under title IV-E. A quality assurance process also would help minimize improper claiming of title IV-E foster maintenance payments.

## **Strengths and Promising Practices**

### **Judicial Determinations**

The IV-E Review reflected the dedicated collaboration between the state child welfare agency and the court system through the Statewide Multidisciplinary Child Welfare Team and Court Improvement Program to ensure that court proceedings occurred timely and that title IV-E requirements were being met. The title IV-E agency and the Court Improvement Program staff

have collaborated to ensure only that permanency hearings and reasonable efforts to finalize permanency plans are timely. NYS periodically host title IV-E “dress rehearsals” to monitor the quality of eligibility determinations and provides training to the local social services districts if needed. Reviewers noted that the court order language was clear, timely and specific to the individual case. The court petitions and order were child specific and well documented. In all sample cases reviewed, the court orders and judicial determinations of reasonable efforts to prevent removal were found in the first order along with the judicial determinations of whether remaining at home was contrary to the child’s welfare. The permanency hearings, in which judicial findings of reasonable efforts to finalize the permanency plan are obtained, are occurring on a timely basis and in many instances before the due dates. The agency’s authority for the placement and care of the child was clearly documented for each sample case.

### **Eligibility Determinations**

New York is state-supervised, locally administered and eligibility determinations are completed by the local Department of Social Services (LDSS). The LDSS references the OCFS Eligibility Manual for Child Welfare Programs that was developed by the state’s central office and issued to every LDSS as a resource in determining eligibility. The manual has the July 16, 1996 AFDC requirements and a description of the title IV-E eligibility requirements. The Initial Foster Child Eligibility Checklist (LDSS- 4809) also is included to assist with and record the eligibility determination. The LDSS’ determinations consist of the checklist along with the state’s Welfare Management System (WMS), which electronically calculates and maintains the required budgeting computations for public assistance programs. The state is in the process of transitioning to a web-based format for its eligibility worksheet to incorporate all financial eligibility criteria for the family and automatically perform eligibility determinations for title IV-E eligibility based on family-specific data.

Reviewers noted that each step of the state’s eligibility determination process was thoroughly documented with information in the child’s record on household composition, financial need and parental deprivation and budget calculations. The AFDC eligibility requirements were met for each child in the review sample.

However, in eligibility determinations completed after June 2014, the eligibility checklist did not clearly specify the month of the eligibility determination. Reviewers had to read other case material to verify eligibility was determined for the correct month and in some cases the state was required to reconstruct eligibility to document eligibility was determined for the correct month. The child must be eligible for AFDC in the removal home in the month the voluntary placement agreement is signed or court proceedings are initiated leading to the child’s removal. The title IV-E agency’s determination process must document AFDC eligibility is based on the circumstances in the removal home in the month the court proceedings are initiated or the month the voluntary placement agreement is signed. We recommend the state develop a method that shows clear and visible documentation of the month AFDC eligibility criteria have been met. The state should add the eligibility month as a data element on its current eligibility checklist and on the automated worksheet it is currently developing.

## **Additional Area for Consideration and Strengthening**

### **Payment Records & Histories**

New York's financial data are collected through multiple systems -New York Welfare Management System (WMS) and Benefits Insurance and Control System (BICS). The payment authorizations in these automated data systems are difficult to interpret and the systems do not have a function to produce payment histories electronically. The BICS displays only positive figures, regardless of whether there are negative or positive adjustments. Negative adjustments are prepared on a separate BICS Composite Report. The payment histories for the title IV-E Review were done manually in an excel workbook and required extensive staff time to ensure accurate information was reported and displayed correctly in an easy to read format. ACF recommends that the automated system be upgraded with functionalities that allow the payment records and histories to be more understandable and produced electronically.

In our analyses of the payment history files there were multiple retroactive changes, payment adjustments, and payment cancelations in some payment records. We identified these issues when the state requested to remove seven (7) case samples, which included one (1) oversample prior to the onsite review process. We also eliminated three (3) case samples onsite during the week of the title IV-E Review. The incorrect coding of these cases was identified as data entry errors at the local district level. We also found payments were not made timely to service providers. The untimely payments resulted in a delay in title IV-E claiming, and affected the accuracy of information reported to AFCARS. The ACF recommends a quality assurance process to ensure that payment information is properly entered and coded. We also recommend that the state institute a process to ensure that payments are made to providers in a timely manner and that title IV-E claims are also submitted timely.

### **Disallowances**

A disallowance in the amount of \$914 FFP in maintenance assistance payments and \$1,253 FFP in administrative costs is assessed for the identified error cases during the PUR. An additional disallowance associated with the non-error case is assessed for ineligible payments identified as outside the PUR, in the amount of \$1,179 FFP in maintenance assistance payments.

The total disallowance resulting from the review is \$2,093 FFP in maintenance assistance and \$1,253 FFP in administrative cost.

Underpayments identified as the result of the review may subsequently be claimed by a state filing an increasing adjustment on its Form CB496 in the next quarter, but not later than 2 years after the calendar quarter in which the state agency made the expenditure. (In accordance with federal regulations at 45 CFR §95.7)

### **Next Steps**

As part of the state's ongoing efforts to improve its title IV-E foster care eligibility determination process, CB recommends that New York examine the areas of concern identified in this report.

The CB Region 2 Office will continue to work with the state in a collaborative effort to provide technical assistance to further strengthen the state's title IV-E program.