State of West Virginia
Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for
May 16, 2011 – May 20, 2011

Introduction

During the week of May 16, 2011, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of the West Virginia title IV-E foster care program. The review was conducted in collaboration with the West Virginia Department of Health and Human Resources (DHHR) and was completed by a review team comprised of representatives from DHHR, CB Central and Regional Offices, ACF Regional Grants Management and peer reviewers.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether West Virginia's title IV-E foster care program was 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 that appropriate payments were made on behalf of eligible children.

Scope of the Review

The primary review encompassed a sample of the State's foster care cases that received a title IV-E maintenance payment during the six-month period under review (PUR) of April 1, 2010 through September 30, 2010. A computerized statistical sample of 100 cases (80 cases plus 20 oversample cases) was drawn from State data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. Eighty (80) cases were reviewed, which consisted of 66 cases from the original sample plus 14 oversample cases. Fourteen (14) cases were excluded from the original sample because no title IV-E foster care maintenance payment was made during the PUR. West Virginia provided documentation to support excluding these cases from the review sample and replacing them with cases from 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)(1) and (2), 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 and 45 CFR §1355.20(a); and
- Safety requirements for the child's foster care placement as required at 45 CFR §1356.30.

The case file of each child in the selected sample was reviewed to verify title IV-E eligibility. The foster care provider's file also was examined to ensure the foster family home or childcare institution where the child was placed during the PUR was licensed or approved and that safety requirements were appropriately documented. Payments made on behalf of each child were also reviewed to verify that the expenditures were allowable under title IV-E and to identify potential 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 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 service date of an unallowable activity and title IV-E maintenance was paid for the unallowable activity. In addition, underpayments were identified for a sample case when an allowable title IV-E maintenance payment was not claimed by the State for an eligible child during the two-year filing period specified in 45 CFR §95.7, unless the title IV-E agency elected not to claim the payment or the filing period had expired.

Compliance Finding

The review team determined that 68 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Twelve (12) cases were determined to be in error for either part or all of the PUR and eighteen (18) non-error cases were found to be ineligible for Federal funding for a period of claiming. Accordingly, Federal funds claimed for title IV-E foster care maintenance payments, including related administrative costs associated with the error cases and non-error cases with ineligible payments, are being disallowed. In addition, seventeen (17) non-error cases were identified to have periods of eligibility for which the State did not claim allowable title IV-E maintenance payments. These underpayments may be claimed within the two-year filing period in accordance with applicable Federal regulatory provisions. Because the number of cases found to be in error is more than four (4), West Virginia is not in substantial compliance for the PUR.

Case Summary

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.

Error Cases

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments FFP	
		Maintenance	**Administration**
OS2	Foster care maintenance payments were made for the period after the child turned 18 years of age and not expected to graduate prior to the child's 19th birthday. [§472(a)(1) and (4) of the Act, 45 CFR 1356.71(d)(1)(v)] Ineligible: 06/01/2010-07/31/2010	$1,126.30	$573
OS10	Judicial determination of contrary to the welfare was not attained [§472(a)(1) and 471(a)(15)(B)(i) of the Act; 45 CFR 1356.21(c)] Ineligible: 03/31/2010 – 10/21/2010	$22,051.51	$2,010
WV13	Child was not removed from specified relative. [§472(a)(1) and (4) of the Act, 45 CFR 1356.21(k)(1)] Ineligible: 04/30/2010 – 08/31/2010	$2,413.50	$1,145
WV21	Judicial determination of reasonable efforts to finalize permanency plan was not timely. [§472(a)(2)(A)(ii) of the Act; 45 CFR §§1356.21(b)(2)] Ineligible: 08/01/2010 – 01/25/2011 Foster care maintenance payments were made for a period during which the family foster home was not fully licensed. [§472(b) and (c) of the Act; 45 CFR §§1356.71(d)(1)(iv), 1355.20] Ineligible: 06/18/2010 – 01/25/2011	$160.90	$2,028
WV22	Valid removal did not occur; the child remained in the removal home for 3 weeks after judicial removal for foster care, but the delayed physical removal was not authorized by the removal court order. [§475(5)(F) of the Act,45 CFR 1355.20, 1356.21(k)(2) and 1356.22] Ineligible: 08/01/2010 – 01/31/2011 Financial need was not established for AFDC eligibility. [§472(a)(1) and (4) of the Act; 45 CFR 1356.71(d)(1)(v)] Ineligible: 08/01/2010 – 01/31/2011	$30,986.03	$1,742

WV 29	Judicial determination of contrary to the welfare was not attained. [§472(a)(1) and 471(a)(15)(B)(i) of the Act; 45 CFR 1356.21(c) Ineligible: 09/30/2008 – 07/31/2010	$25,980	$6,249
WV 42	Judicial determination of reasonable efforts to finalize the permanency plan was not attained. [§472(a)(1), §471(a)(15)(B)(ii) of the Act; 45 CFR §§1356.21(b)(2)] Ineligible: 09/01/2010 – 03/30/2011	$2,359.50	$1,455
WV55	Financial need was not established for AFDC eligibility. [§472(a)(1) and (4) of the Act; 45 CFR 1356.71(d)(1)(v)] Ineligible: 06/01/2010 – 12/31/2010	$2,896.20	$2,022
WV64	Valid removal did not occur; child remained the in removal home after judicial removal for foster care and the delayed physical removal was not authorized by the removal court order. [§475(5)(F) of the Act,45 CFR 1355.20, 1356.21(k)(2) and 1356.22] Ineligible: 08/31/2010 – 01/31/2011	$2,878.20	$1,455
WV70	Financial need was not established for AFDC eligibility. [§472(a)(1) and (4) of the Act; 45 CFR 1356.71(d)(1)(v)] Ineligible: 04/30/2010 – 09/21/2010	$2,533.97	$1,432
WV79	Judicial determination of contrary to the welfare was not attained. [§472(a)(1) and 471(a)(15)(B)(i) of the Act; 45 CFR 1356.21(b)(1)] Ineligible: 08/13/2009 – 04/30/2011 Judicial determination of reasonable efforts to prevent removal [§472(a)(1) and 471(a)(15)(B)(i) of the Act; 45 CFR 1356.21(c)] Ineligible: 08/13/2009 – 04/30/2011	$9,043.42	$6,046
WV80	Valid removal did not occur; the child remained in the removal home after judicial removal for foster care and the delayed physical removal was not authorized by the removal court order. [§475(5)(F) of the Act,45 CFR 1355.20, 1356.21(k)(2) and 1356.22] Ineligible: 03/31/2008 – 04/29/2011	$45,503.65	$10,536
		$147,933.18	$36,693.00
Total		**$184,626.18**	

Non-error Cases with Ineligible Payments

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)	
		Maintenance	Administration
OS1	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: family assessment (10/1/2009); case management (10/1/2009); transportation (10/1/2009)	$210.46	$0
WV5	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: transportation (8/29/2007; 05/09/2008)	$1,038.90	$0
WV10	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: transportation (09/21/2010; 10/07/2010)	$126.15	$0
WV18	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: family assessment (12/11/2009); case management (12/11/2009); transportation (12/11/2009)	$769.33	$0
WV 23	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: transportation (11/12/2007, 07/22/2010, 08/09/2010, 01/21/2011); supervised visitation (04/17/2008, 05/12/2008, 06/03/2008, 06/17/2008, 06/25/2008, 06/30/2008, 09/30/2008, 10/02/2008, 11/05/2008, 12/30/2008, 01/13/2009, 02/04/2009, 03/04/2009, 06/28/2010, 06/30/2010, 08/03/2010, 08/24/2010, 09/09/2010)	$1,516.20	$0

WV31	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: supervised visitation (02/03/2011, 03/07/2011, 04/05/2011, 06/04/2010, 08/06/2010, 08/06/2010, 10/06/2010); transportation (08/06/2010, 08/06/2010, 08/06/2010, 08/06/2010, 09/07/2010, 09/07/2010, 09/07/2010, 11/04/2010, 10/06/2010)	$1,389.52	$0
WV32	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: supervised visitation (1/11/2010, 1/22/2010, 2/05/2010, 3/05/2010, 3/25/2010, 4/12/2010, 5/07/2010, 5/21/2010, 6/13/2010, 6/23/2010, 7/14/2010, 08/06/2010, 09/08/2010, 09/23/2010); intervention travel (1/22/2010, 2/05/2010, 3/05/2010, 3/25/2010, 4/12/2010, 4/30/2010, 5/07/2010, 5/21/2010, 6/13/2010, 8/06/2010, 9/08/2010. 9/23/2010); transportation (8/06/2010, 9/08/2010, 9/23/2010, 10/08/2010)	$5,478.97	$0
WV36	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: transportation (8/23/2010)	$38.62	$0
OS6	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: transportation (8/18/2010)	$66.61	$0
WV43	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: supervised visitation (4/22/2010, 5/11/2010)	$64.36	$0
OS11	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: case management (4/22/2011); family assessment (4/22/2011)	$364.79	$0

WV49	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: supervised visitation (1/14/2010, 2/12/2010, 3/15/2010, 4/11/2010, 5/14/2010, 5/14/2010	$402.25	$0
WV57	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: family assessment (4/09/2010); transportation (4/15/2010, 6/23/2010)	$620.14	$0
WV58	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: case management (12/11/2009); transportation (12/11/2009); family assessment (12/11/2009)	$392.53	$0
WV59	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: supervised visitation (10/10/2008, 11/07/2008, 1/12/2009, 2/16/2009, 4/20/2010, 8/11/2009, 9/10/2009, 10/09/2009, 11/09/2009, 12/9/2009, 1/26/2010, 2/09/2010, 3/11/2010, 4/23/2010, 5/10/2010)	$983.93	$0
WV60	Foster care maintenance payment was made for a period before the foster family home was fully licensed. [§§472 (b) and (c) of the Act and 45 CFR §1355.20(a)] Ineligible: 10/01/2008 – 10/31/2008 Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: transportation (8/06/2010)	$482.70 $590.98	$282 $0
WV63	Judicial determination of reasonable efforts to finalize permanency plan was not timely. [§§472 (a) (1), 471 (a)(15)(B)(ii) of the Act and 45 CFR §1356.21(b)(2)] Ineligible: 09/01/2009 – 03/31/2010	$8,564.55	$2,000

WV71	Foster care maintenance payment was made for services which are outside the definition of allowable title IV-E program costs. [§475(4) of the Act; 45 CFR 92.22] Ineligible: supervised visitation (10/23/2009, 12/04/2009, 1/04/2010, 2/03/2010, 2/24/2010, 3/25/2010, 4/30/2010); MDT attendance (12/04/2009, 2/3/2010); transportation (2/03/2010, 2/24/2010, 3/25/2010, 4/30/2010)	$1,504.09	$0
Total		$24,605.08	$2,282
Total		**$26,887.08**	

Underpayment Cases

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP) Maintenance
WV5	Title IV-E was not claimed for clothing costs for an eligible child. [45 CFR 1356.21 and 1356.60] Eligible: 09/14/2010	$201.13
WV6	Title IV-E was not claimed for clothing costs for an eligible child. [45 CFR 1356.21 and 1356.60] Eligible: 10/2009	$236.39
WV8	Foster care maintenance payment was not claimed for the entire month of initial eligibility. [§472(a) of the Act; 45 CFR 1356.21; ACYF-CB-PIQ-91-05] Eligible: 05/09	$301.58
WV12	Title IV-E was not claimed for clothing costs for an eligible child. [45 CFR 1356.21 and 1356.60] Eligible: 10/2009	$80.37
WV18	Foster care maintenance payment was not claimed for the entire month of initial eligibility [§472(a) of the Act; 45 CFR 1356.21; ACYF-CB-PIQ-91-05] Eligible: 10/2009 Foster care maintenance payments were canceled although the child remained eligible. [45 CFR 1356.21 and 1356.60] Eligible: 11/30/2010	$2,210.12 $2,684.62
OS5	Foster care maintenance payments were canceled although the child remained eligible. [45 CFR 1356.21 and 1356.60] Eligible: 12/2009	$482.70
WV27	Title IV-E was not claimed for clothing costs for an eligible child. [45 CFR 1356.21 and 1356.60] Eligible: 06/2010	$402.25

WV34	Title IV-E was not claimed for clothing costs for an eligible child. [45 CFR 1356.21 and 1356.60] Eligible: 11/2009	$114.54
WV38	Foster care maintenance payments were canceled although the child remained eligible. [45 CFR 1356.21 and 1356.60] Eligible: 05/01/2008 – 05/31/2008; and 05/2009 to Present Title IV-E was not claimed for clothing costs for an eligible child. [45 CFR 1356.21 and 1356.60] Eligible: 06/30/2009 and 09/14/2010	$6,624.96 $362.03
OS8	Foster care maintenance payment was not claimed for the entire month of initial eligibility. [§472(a) of the Act; 45 CFR 1356.21; ACYF-CB-PIQ-91-05] Eligible: 05/2010	$589.90
OS11	Title IV-E was not claimed for clothing costs for an eligible child. [45 CFR 1356.21 and 1356.60] Eligible: 09/2010	$201.13
WV47	Title IV-E was not claimed for clothing costs for an eligible child. [45 CFR 1356.21 and 1356.60] Eligible: 09/2009 and 02/20/2010	$239.45
WV49	Title IV-E was not claimed for clothing costs for an eligible child. [45 CFR 1356.21 and 1356.60] Eligible: 06/30/2010	$160.90
WV57	Title IV-E was not claimed for clothing costs for an eligible child. [45 CFR 1356.21 and 1356.60] Eligible: 09/2010	$201.13
WV58	Title IV-E was not claimed for clothing costs for an eligible child. [45 CFR 1356.21 and 1356.60] Eligible: 06/2009	$118.91
WV65	Title IV-E was not claimed for clothing costs for an eligible child. [45 CFR 1356.21 and 1356.60] Eligible: 06/30/2010 and 09/14/2010	$362.03
WV75	Foster care maintenance payments were canceled although the child remained eligible. [45 CFR 1356.21 and 1356.60] Eligible: 11/2010	$6,055.39
Total		**$21,629.53**

Areas in Need of Improvement

The overall findings of this review indicate eligibility determination and fiscal staff are not consistently making eligibility and claiming decisions that are compatible with the title IV-E requirements. There does not appear to be consistent, collaborative application of the Federal eligibility requirements which has led to the unsatisfactory compliance level in this review, consisting of an excessive number of erroneous payments, otherwise ineligible payments and underpayments. Specifically, the review findings demonstrate the State needs to further develop and implement procedures to improve program performance in the following areas of concern.

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: *Application of Title IV-E Requirements Related to AFDC*
In four (4) error cases, it was determined that title IV-E payments were made improperly because a correct AFDC determination had not been established. In two (2) of the error cases related to AFDC determinations, financial need and deprivation had not been established correctly. Eligibility staff did not include stepparent income in the household income in one case. In other cases, the State excluded an unemployed parent as the basis for deprivation, relying upon an obsolete definition of unemployment. It was noted that State eligibility workers continue to conduct AFDC redeterminations. While not impermissible, it is no longer a Federal requirement.

Title IV-E Requirement: Consistent with the Federal provision at 45 CFR 1356.71(d)(1)(v), States will be reviewed against the requirements of title IV-E of the Act regarding eligibility for AFDC under such State plan as was in effect on July 16, 1996.

Recommended Corrective Action: The State could benefit from regular policy and procedural reviews which should include a review of Federal requirements to ensure that the State maintains compliance particularly when new legislative requirements are implemented. As the State reviews policy updates and/or changes that are required to maintain compliance, financial controls should also be considered to keep current with changing policy. It is recommended that policy and procedural reviews include communication between the title IV-E eligibility unit and the SACWIS unit. In addition, title IV-E eligibility unit staff could benefit from training in making AFDC determinations in accordance with the 1996 AFDC State Plan.

Issue #2: *Unallowable Program Costs.* In eighteen (18) non-error cases, it was determined that title IV-E payments were made for items outside the definition of foster care maintenance payments at section 475(4) of the Act. The payment histories and subsequent documentation which was provided by the State showed that costs were claimed for ineligible expenses, such as transporting the child's parents to visit the child, supervised visitation, and case management services. Title IV-E permits only reimbursement for costs for transporting the child for visits with parents or to the school of origin as maintenance payments. Transportation costs of a parent or other relative visiting with the child may not be claimed for FFP. Title IV-E does not permit reimbursement for social services, such as case management and supervision of visitations as maintenance costs. Some of these costs may be reimbursable as title IV-E administrative costs consistent with an approved cost allocation plan.

Title IV-E Requirement: Consistent with the Federal provision at 45 CFR 1356.60(a)(1)(i), title IV-E foster care maintenance assistance payments may only be claimed only for 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 that foster care maintenance payments claimed for title IV-E reimbursement are for allowable expenditures in accordance with the statutory definition, are in amounts conforming to the State established rates of payment for the type and level-of-care provided, and reflect non-duplicative amounts of the costs of daily maintenance.

Recommended Corrective Action: DHHR should work with the title IV-E eligibility unit and fiscal officers to institute adequate financial edits that will prevent payments for ineligible children or unallowable program costs. It will also be important for West Virginia to clearly define in policy what may be appropriately claimed under title IV-E and provide training to agency workers. West Virginia may use title XX, title IV-B funds, or other appropriate funds, to cover the costs of items and services not allowable under title IV-E.

Issue #3: *Judicial Determinations Regarding Reasonable Efforts to Finalize a Permanency Plan.* Two (2) cases were found to be in error and two (2) non-error cases had ineligible payments because the judicial requirement of "reasonable efforts to finalize a permanency plan" was not satisfactorily met. In the cases reviewed, the required judicial finding was not explicitly documented in the court order. Additionally, some title IV-E eligibility staff considered a judicial finding of reasonable effort to reunify and/or to prevent placement as having met this requirement. Such language is permissible for and consistent with the reasonable efforts to prevent removal findings pertaining to children who have entered foster care before March 27, 2000. In some cases reviewed, a Termination of Parental Rights Order had been incorrectly used as evidence of meeting this requirement when the order did not contain the required judicial language.

Title IV-E Requirement: For a child who is judicially removed and remains in foster care for 12 months or more, Federal provisions at §472(a)(2)(A) of the Act and 45 CFR §1356.21(b)(2) require the State to obtain a judicial determination of whether the State made "reasonable efforts to finalize a permanency plan" for the child. The judicial finding must occur at regular 12-month intervals for the duration of the foster care episode and no later than 12 months from the month in which the prior determination is obtained. If the judicial determination of "reasonable efforts to finalize" is not made or is not timely, the child becomes ineligible from the beginning of the first month after it is due and remains ineligible until the first day on the month in which the judicial determination is made.

Recommended Corrective Action: The requisite judicial determination need not be tied to a permanency or other court hearing. The judicial determination may be rendered by the court at any point during the 12-month period. The State should continue to develop and implement procedures to ensure timely judicial determinations of "reasonable efforts to finalize the permanency plan" regardless of the timing of the permanency hearing. The accuracy and reliability of eligibility determinations generally are increased through training of the judiciary and other court officials to correct delays in judicial findings as well as to secure court orders that reflect title IV-E criteria on legal authority, best interests and reasonable efforts. Staff training will help to that ensure workers make eligibility decisions based on the elements needed for compliance and to eliminate the authorization of payments prior to establishing compliance with the requirements. In addition, it is recommended that the State put in place a quality assurance system to monitor the accuracy of eligibility determination and claiming processes.

Issue #4: *Invalid Removal*

The onsite review identified three (3) cases that were determined to be in error because there was not a valid removal of the child from the home. Although the court made a determination in these cases that it was contrary to the child's welfare for the child to remain in the home, in each

of these cases the child remained in the removal home and the delayed physical removal was not authorized by the removal court order.

Title IV-E Requirement: According to 45 CFR §1356.21(k)(2), a valid removal has not occurred when a court ruling sanctions the removal of the child from the parent or another specified relative and the child is allowed to remain in the same specified relative's home under the supervision of the State agency unless the court order authorizes the delayed physical removal of the child. The State agency must ensure that physical removal from the home coincides with the judicial ruling that authorizes the child's removal from the home and placement in foster care. The judicial determination that results in the child's removal must coincide with (i.e., occur at the same time as) the agency's action to physically or constructively remove the child, unless the court order specifies an alternative timeframe for removal, as allowed for in the Departmental Appeals Board (DAB) decision # 2017.

Recommended Corrective Action: The State should provide local agencies with specific training and policy that clearly indicates that if a court order sanctions a child's removal from the home that the child must be physically removed from that home in order to be eligible for title IV-E foster care payments, unless the court order specifies an alternative timeframe for removal. The State must be cognizant of the safety concerns associated with the practice of permitting a child to remain in the home after it is determined conditions in the home warrant removal. If immediate removal is not necessary, the agency may obtain the order for removal at the point it becomes necessary to do so to protect the child from harm or the threat of harm.

Underpayments

A number of cases with potential underpayments were reviewed. While the State chooses to seek reimbursement through the TANF program for clothing costs purchased at Wal-Mart for some eligible children, reviewers noted that twelve (12) cases where West Virginia had an opportunity to seek Federal financial reimbursement for clothing costs from other retailers but did not do so. Potential underpayments were also attributed to delays with inputting case information into SACWIS during the month of initial eligibility. In three (3) cases, foster care maintenance payments were not claimed for an eligible child in a reimbursable placement from the beginning of the month of initial eligibility. Reviewers also noted three (3) cases in which foster care maintenance payments were discontinued during a month a child remained eligible in a title IV-E reimbursable placement.

Strengths and Promising Practices

The following positive practices and processes of the title IV-E foster care eligibility program were observed during the review. These approaches have led to improved program performance and successful program operations.

Licensing: The licensing process for childcare institutions and foster family homes was completed timely, consistent with West Virginia policy. Approval documents indicated the specific periods for which the provider was licensed. The agency's process for ensuring providers are meeting licensing requirements was evident through the complete and thorough

documentation found by reviewers in both the physical case record and in the West Virginia SACWIS. The State agency made staff available to expeditiously obtain any missing information to resolve licensing and criminal records check issues. The efficiency with which this information could generally be retrieved demonstrated strength in this area.

Disallowances

A disallowance in the amount of $147,933.18 Federal financial participation (FFP) in maintenance payments and $36,693.00 FFP in related administrative costs is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of $24,605.08 FFP in maintenance payments and $2,282 FFP in related administrative costs are disallowed for title IV-E foster care payments claimed improperly for the non-error cases. The total disallowance as a result of this review is $211,513.26 FFP for maintenance and administrative costs. The State also must identify and repay any ineligible payments that occurred for the error and non-error cases subsequent to the PUR. No future claims should be submitted on these cases until it is determined that all eligibility requirements are met.

Some ASO Demand payments may be potentially eligible for partial reimbursement as administrative costs at the applicable 50% FMAP rate. The State may submit retroactive claims with supporting documentation for these costs within 24 months from the date of the initial claim.

Next Steps

West Virginia was found not to be in substantial compliance. Therefore, it is required to develop a Program Improvement Plan (PIP) to address those areas needing corrective action as identified in this report. The PIP is not to exceed one year and must be developed by the State in consultation with Regional Office staff. West Virginia must submit the PIP to the Regional Office within ninety (90) calendar days from the date of the letter conveying this report. The PIP must include the following components:

- Specific goals or outcomes for program improvement;
- Action steps required to correct each identified weakness or deficiency;
- Dates for completing each action step;
- How progress will be evaluated by the State and reported to the Regional Office, including the frequency and format of the evaluation procedures; and
- How the Regional Office will know that an action step has been achieved.

Following the expiration of the approved PIP completion date, a secondary review must be held during the second AFCARS reporting period that immediately follows the approved completion date of the PIP. The review sample for the secondary review will be 150 cases (plus at least a 10 percent oversample) drawn from West Virginia's most recent AFCARS data submitted for the reporting period that immediately follows the approved PIP completion date.