

**MARYLAND TITLE IV-E
FOSTER CARE ELIGIBILITY REVIEW
APRIL 1 to SEPTEMBER 30, 2001**

INTRODUCTION

From July 29 to August 2, 2002, staff from the Central and Region III Offices of the Administration for Children and Families (ACF) teamed with representatives of the Maryland Department of Human Resources (DHR) to conduct an eligibility review of Maryland's title IV-E foster care program. The review was conducted at the offices of DHR and, at the request of the State, the Baltimore City Department of Social Services.

The purposes of the review were to determine if Maryland was in compliance with the child and provider eligibility requirements of Section 472 of the Social Security Act (the Act) and 45 CFR 1356.71 and to validate the basis of Maryland's financial claims to determine whether appropriate payments were made on behalf of eligible children to eligible foster care providers.

Maryland was reviewed against the following requirements of the title IV-E section of the Act and 45 CFR:

- a. The eligibility of the children on whose behalf the foster care maintenance payments are made ((Sections 472 (a)(1)-(4)) to include:
 - Judicial determinations regarding reasonable efforts and contrary to the welfare in accordance with 45 CFR 1346.21(b)(1) and (c), respectively;
 - Voluntary placement agreements as set forth in 45 CFR 1356.22;
 - Responsibility for placement and care vested with State agency as stipulated in 472(a)(2) and 45 CFR 1356.71(d)(1)(iii);
 - Placement in a licensed foster family home or child care institution as defined in Sections 472(a)(3)(b) and (c); and,
 - Eligibility for Aid to Families with Dependent Children (AFDC) under the State Plan as was in effect on July 16 1996 as required by Section 472(a)(1) and (4) and 45 CFR 1356.71(d)(1)(v).
- b. Allowable payments made to foster care providers who comport with Sections 471(a)(10), 471(a)(20), 472(b) and (c), and 45 CFR 1356.30.

SCOPE OF THE REVIEW

The Maryland title IV-E review encompassed a sample of all of the title IV-E foster care cases for which a foster care maintenance payment was made during the period April 1 to September 30, 2001. A computerized statistical sample of 101 cases was drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data which was transmitted by

Maryland to ACF for the period under review. The child's case file was perused for the determination of title IV-E eligibility and the provider documentation was checked for licensure and safety requirements for the entire period under review.

Pursuant to the promulgation of the final regulations which became effective March 27, 2000, this was the initial primary review of the Maryland title IV-E foster care program. Of the 101 case record identifying numbers drawn, 80 cases were fully examined. Of the 80 cases, 38 were found to be in error for reasons identified in the Case Record Summary section of the report. Since the number of errors exceeded the threshold of eight (8) for an initial primary review, ACF determined Maryland **not** to be in substantial compliance. Therefore, pursuant to 45 CFR 1356.71(i), Maryland is required to develop a Program Improvement Plan (PIP) designed to correct those areas determined not to be in compliance. The PIP is to be developed by Maryland in consultation with ACF Regional Office staff. It must be submitted to the Region by January 4, 2003. Following ACF's acceptance of the PIP, Maryland will have up to a year to implement it. Upon satisfactory completion of the PIP, a secondary review of 150 cases will be conducted.

CASE RECORD SUMMARY

Detailed in the chart below by sample number are the case error citations, the period of ineligibility, and the amount of erroneous payments.* Note that the calculation of erroneous payments is based on the Federal Financial Participation rates of the administrative and maintenance costs at the Federal Medical Assistance Percentages for the applicable year(s) for each sample case.

SAMPLE NUMBER	CITATION(S)	ERRONEOUS PAYMENTS
1	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-7/16/02	**
9	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-8/2/02	18,651
11	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-5/10/01	1,546
15	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-8/2/02	27,314
16	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-6/21/01	9,122
17	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-5/16/01	1,773
19	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-8/2/02	12,881
21	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 5/24/01-6/30/01	1,399
23	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-3/15/02	12,946
27	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-8/2/02	39,539

31	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01- 7/13/01	3,354
33	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-4/3/01	111
35	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 9/1/01-9/10/01	373
39	1356.21(b)(2) Reasonable efforts to finalize perm plan; Ineligible: 4/1/01-8/2/02	31,272
41	1356.21(c)(b)(1)Contrary to welfare; Reasonable efforts to prevent removal/reunify Ineligible: 10/25/99-8/2/02 1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-8/2/02	40,335
42	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-8/2/02	49,737
48	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-8/2/02	18,396
50	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-10/10/01 1356.71(d)(v) AFDC determinations Ineligible: 6/27/01-10/10/01	7,014
52	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 8/8/01-10/16/01	2,610
53	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-11/5/01	15,425
54	1356.71(g)(1) Licensing Ineligible: 4/1/01 –4/26/01	1,013
55	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 7/7/01-8/2/02	14,617
57	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-8/2/02 Section 475(4)(A) Educational assistance not included in definition of foster care maintenance payments Ineligible: 6/29/00-6/1/01	56,701
59	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-8/2/02	48,122
60	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-12/20/01	22,123
71	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-9/30/01	6,669
72	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-8/2/02	17,789
73	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-6/18/02	17,530
76	1356.71(g)(1) Licensing Ineligible: 4/1/01	42

78	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 8/29/01-8/2/02	12,920
80	1356.21(b)(1) Reasonable efforts to prevent removal/reunify Ineligible: 10/25/85-8/2/02 1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-8/2/02 1356.71(g)(1) Licensing; 1356.30 (a)(b) Criminal records check Ineligible: 8/29/01-9/19/01	106,174
OS/1	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-8/2/02	20,014
OS/3	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-11/6/01	8,152
OS/4	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 5/2/01-9/23/01	2,392
OS/7	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-12/17/01	19,015
OS/8	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-8/2/02	49,471
OS/9	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-8/2/02	20,821
OS/13	1356.21(b)(2) Reasonable efforts to finalize perm plan Ineligible: 4/1/01-6/11/01	2,766
TOTAL 38 CASES	TOTAL ERRONEOUS PAYMENTS	\$720,129

* See the attached sheet which breaks out the administrative costs for each case.

** Originally charged to Federal, but adjusted records in July 2002 to State funds.

AREAS IN NEED OF IMPROVEMENT

In the most recent update to the Child and Family Services Plan, which was approved on August 22, 2002, Maryland again committed to continuous quality improvement. This fact is joined with Maryland's having been determined to **not** be in substantial compliance with respect to its title IV-E foster care program and therefore being required to develop and implement a PIP. The following comments are provided to assist the State in its overall improvement initiatives and with specific reference to the development and implementation of the PIP.

- The initial primary review of a title IV-E program requires the examination of 80 case records which are selected based on AFCARS data received from the State by ACF. An oversample of cases is drawn, which for Maryland, came to 21 cases. This brought the total sample size to 101. Cases on the oversample listing are used sequentially whenever a case in the original listing can not be used for allowable reasons which are: (1) no title IV-E payment made on a case during the review period; (2) the child was not in foster care during the review period; (3)

documentation exists to show that the title IV-E payments were made in error and subsequently rescinded prior to the sample being drawn; and (4) the case is included in a Federally approved waiver demonstration project. Eleven (11) oversample cases were used. Four (4) of the 101 cases are part of a waiver demonstration project and the remaining 7 were either cases in which no IV-E payment was made during the review period or payment was made erroneously and was rectified prior to the sample being drawn. The 7 aforementioned cases suggest that more attention should be focused on the coding of AFCARS item # 59, which delineates IV-E and non- IV-E payments.

- Inspection of the Case Record Summary section of this report quickly establishes that the overwhelming majority of case errors involve reasonable efforts to finalize the permanency plan for the child. The specifics of the requirement are found at 45 CFR 1356.21(b)(2) and are as follows:

... (i) The State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

(ii) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made, the child becomes ineligible under title IV-E from the end of the twelfth month following the date the child entered foster care in accordance with the definition at § 1355.20 of this part, or the end of the month in which the most recent judicial determination of reasonable efforts to finalize a permanency plan was made, and remains ineligible until such a judicial determination is made.

Please especially note that following the initial judicial determination, the reasonable efforts to finalize a permanency plan must be made no less frequently than once every 12 months for every child in foster care.

Of the 38 cases which were examined and found to have errors, only 2 did not have reasonable efforts to finalize a permanency plan as an unmet criterion. But for the lack of the reasonable efforts to finalize a permanency plan determinations, Maryland would have been found to be in substantial compliance in this initial primary review. Typically, the case records were replete with documentation of ongoing judicial activities but did not contain the requisite language to the effect that reasonable efforts had been made to finalize the permanency plan. The lack of the appropriate determination to finalize permanency plans was particularly noted in cases involving termination of

parental rights. Some of the case records of 2 of Maryland's jurisdictions did bear evidence of the requisite judicial determinations. The jurisdictions are Baltimore City Department of Social Services and Wicomico County Department of Social Services. It is recommended that DHR work with the Court Improvement Program and, as applicable, the National Resource Center(s) for assistance in institutionalizing the addressing and documenting the requisite judicial determination for *each* child in foster care.

- Documentation of adherence to licensing requirements and safety was an error in 3 cases. Such errors occurred when there were atypical circumstances such as a high number of providers in a relatively short time span or a foster family and child moving to Maryland from another state. Notwithstanding, there has to be checks and balances in place to assure that children are afforded the legally mandated protections each and every time they are placed with a foster care provider. Moreover, in one case it was noted that a duly licensed foster parent had a criminal background check which yielded charges and arrests for assault, robbery and weapons violation. Minimally, it should be documented in the record that the report had been reviewed and why the decision was made to proceed with the licensing of the foster parent.
- There is one case in which “contrary to welfare” and “reasonable efforts to prevent removal/reunify” and another case in which “reasonable efforts to prevent removal/reunify” are errors. The former is a relatively new case---the child came into foster care in December 1999 and the latter is an older case---the child came into foster care in October of 1985. With respect to “contrary to welfare:” For a child who enters foster care prior to March 27, 2000, which is the effective date of the final child welfare regulations, this determination must result from court proceedings that are initiated no later than 6 months from the date the child is removed from home, consistent with Departmental Appeals Board (DAB) decision 1508. If more than 6 months have elapsed and there is no such judicial determination, the child is ineligible for title IV-E for this entire episode of foster care. As for “reasonable efforts to prevent removal/reunify:” For a child who enters foster care prior to March 27, 2000, a judicial determination that reasonable efforts were made to prevent removal or that reasonable efforts were made to reunify the child and family would have satisfied this reasonable efforts requirements.
- Some information on stability of placement: Nineteen cases were perused in which the children were at least age 14 at the beginning of the review period (April 1, 2001). As of this date and through the end of the review, 10 of the 19 remained in the same placement, 5 changed once and 4 changed 3 or more times. The records show 2 in the last grouping changed placements 5 times from April 1, 2001 to the time of the review.

STRENGTHS

Various strengths were observed in the course of conducting the title IV-E foster care review. As a prelude, it is noted that the records which were examined were maintained in a uniform manner which facilitated their review.

- Overall, and against the framework of Federal statute, regulations and policy, the mandated functions and activities were occurring on a timely basis. These include removal pursuant to a court order, voluntary placement activities, AFDC eligibility determinations, licensure and safety precautions.
- Regarding removal pursuant to a court order: The records established that in 78 of 80 cases the requisite judicial determinations were being done timely with regard to both “contrary to welfare” and “reasonable efforts to prevent removal/reunify.”
- With respect to voluntary placements: Six cases were read which involved removal pursuant to a voluntary placement agreement. All these records evidenced that agreements were executed appropriately and that requisite best interest judicial determinations were made prior to the expiration of the first 180 days. Additionally in 2 of the 6 cases, the reviewer recorded that even though not required, reasonable efforts to finalize permanency plan determinations were made.
- As for AFDC eligibility: All but one of the 80 case records contained appropriate documentation that the necessary eligibility determinations and redeterminations were made. No issue surfaced during the review regarding the use of the State Plan guidelines that were in effect as of July 16, 1996.
- Concerning licensing and safety checks: Licensing records are maintained apart from child case records. In 3 of the 80 records there were unresolved items of appropriate licensure and safety checks of foster care providers. Reviewers were informed by State staff that once a license is issued, it remains in effect until action by the State such as failure to renew or revocation. Yearly reconsiderations are required. Some licenses were seen, however which had on them beginning and ending dates.

DISALLOWANCES

The review included a sample of 80 cases. The sample was drawn from a universe of cases that received at least one title IV-E foster care maintenance payment during the 6-month AFCARS period of April 1 to September 30, 2001. Based on the results of the review, Maryland has been determined to be **not** in substantial compliance. Thirty-eight (38) cases were determined **not** to

be eligible for funding under title IV-E foster care as detailed in this report. Therefore, a disallowance in the amount of \$ 720,129 is assessed for the entire period of time that these cases were determined to be in error.