

Commonwealth of Puerto Rico
Secondary Title IV-E Foster Care Eligibility Review
(AFCARS Review Period: April 1, 2006 through September 30, 2006)

Introduction

During the week of May 7 - 11, 2007, staff of the Children's Bureau's (CB), Administration for Children and Families (ACF), Central and Regional Offices, and the Puerto Rico Administration for Families and Children (ADFAN) and Peer Reviewers conducted a Secondary eligibility review of Puerto Rico's title IV E foster care program. The review was conducted in San Juan, Puerto Rico.

The purpose of the Secondary title IV-E Foster Care Eligibility Review was, (1) to determine if Puerto Rico was in compliance with the eligibility requirements as outlined in 45 CFR §1356.71 and §472 of the Social Security Act; and, (2) to validate the basis of Puerto Rico's financial claims to ensure that appropriate payments were made on behalf of eligible children and to allowable homes and institutions.

This Secondary review was conducted as a result of the findings of the Primary review that was completed during the week of August 11, 2003. At that time, Puerto Rico was determined not to be in substantial compliance with the title IV-E eligibility requirements for the period under review. As required, in a determination of non-substantial compliance, Puerto Rico submitted a Program Improvement Plan (PIP) to correct the areas found deficient in its eligibility program for foster care. The PIP, approved with an effective date of December 1, 2004, was based on the State's reports of progress and final implementation of the planned improvements. The PIP goals included, but were not limited to the following:

- Inclusion of Contrary to the Welfare language in the first court order;
- Judicial determinations made no later than 60 days from removal;
- Judicial determinations of reasonable efforts to finalize the permanency plan made within the 12 months timeframe;
- Revision of policy to ensure accurate and well documented AFDC determinations;
- Placement of foster care children only in licensed or certified homes and facilities; and,
- In addition, to determine accuracy, Puerto Rico conducted a 100% review of its title IV-E caseload as part of their PIP.

Scope and Results of Puerto Rico's Secondary Review

Puerto Rico maintains manual records of maintenance assistance payments to foster care providers on behalf of children under the supervision of the State child welfare agency. In spite of the lack of automation, the ADFAN provided payment and claiming information for all 150 (140 original sample and 10 over-sample) of the reviewed cases. These records were reviewed for each sample case to determine the amount of payments made for each child during the period under review (April 1, 2006 – September 30, 2006) and for earlier periods, when necessary, within the most recent episode of foster care. Based on the diligent work of ADFAN staff, CB was able to verify the timing and amount of payments for each of the reviewed cases. CB was

also able to confirm that the identified payments were part of the foster care maintenance assistance payroll that was utilized to prepare claims for title IV-E reimbursement.

The rate of payment for most foster care cases in Puerto Rico is based on a daily care rate that equals \$300 per child per month. In some instances where CB identified a different rate, there was documentation in the case file establishing approval of a higher rate due to the special needs of the child. Title IV-E foster care claims are sourced from the maintenance assistance payroll produced monthly by the Commonwealth's Treasury Department. According to ADFAN officials, this source does not segregate payments that are made on behalf of title IV-E eligible versus non-title IV-E eligible children. Puerto Rico's practice has been to pay foster care maintenance for all children (whether IV-E eligible) completely out of State funds, submitting only monthly estimates against Federal IV-E funds. Once title IV-E eligibility has been established, adjusted claims are submitted against the Federal allocation.

To date, the Commonwealth of Puerto Rico has not filed title IV-E claims for foster care administrative costs. A cost allocation plan that will provide for the commencement of administrative costs claims for title IV-E and other Federal and Commonwealth programs is currently pending approval with the HHS Division of Cost Allocation. The absence of title IV-E claims for administrative costs precluded the need to identify a pool of administrative costs for association with any unallowable maintenance assistance payment claims.

The Puerto Rico Secondary title IV E Foster Care Eligibility Review encompassed a sample of all of the title IV E foster care cases that received a foster care maintenance payment during the period of April 1, 2006 to September 30, 2006, referred to as the "period under review" (PUR). A computerized statistical sample of 180 cases (150 plus 30 over sample cases) was drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data submission which was transmitted by the State agency to CB for the PUR. Of the 30 over sample cases, 10 were selected for review as it was determined that 10 cases from the original 150 sample did not have title IV-E payments associated with them in the PUR. The child's case file was reviewed for the determination of title IV-E eligibility and the provider's file was reviewed to ensure that the foster home or childcare institution in which the child was placed was licensed or approved for the PUR. In addition, CB and ADFAN agreed that, subsequent to the on-site review, Puerto Rico would have an additional two weeks in which to submit any supporting child or provider documentation for every case found in error or with ineligible payments, as well as revised payment history, as applicable.

Following the on-site review, CB's Regional Office team leaders further reviewed the completed instruments with particular emphasis on the error cases to ensure that the findings were accurately determined. This process resulted in a determination of "non-error" for two cases previously determined to be ineligible as the foster care licenses were missing from the case files at the time of the on-site review. Valid foster care licenses for the two cases #22 and #53 were provided to the review team leaders at the conclusion of the exit conference, thus allowing for a non-error determination upon review.

On May 25, 2007, additional supporting documentation and a detailed title IV-E payment history was submitted to CB's Regional Office, via e-mail, for error cases number 17, 40, 58, 60, 109, 128, 132 and 157. As a result of the additional supporting documentation, CB changed the finding for cases number 17, 40, 58, 109 and 128 to "non-error" cases. Based on the detailed payment history, CB changed the finding for cases number 33, 44 and 80 to "non-error" cases, as

no title IV-E payments were made for the period of ineligibility. However, cases number 60, 132 and 157 remained in error for the following reasons:

#60 – While the argument and documentation were accepted for the purpose of the Reasonable Efforts to Prevent Removal finding, a court finding with respect to Reasonable Efforts to Finalize the Permanency Plan was not made within the required twelve (12) month period. The judicial finding was due on 4/26/06, and made on 8/22/06.

#s 132 and 157 (sibling group) – While the background screenings were accepted for the purpose of meeting the provider safety requirement, the license covering the periods of 4/06 - 8/06 remains outstanding.

For a Secondary review, substantial compliance means that either the case error rate or the dollar error rate does not exceed 10 percent. Under a Secondary review, any disallowance assessed is based on the actual amount of claims (maintenance payments and, where appropriate, associated administrative costs) found to be in error or as constituting ineligible or otherwise improper payments for individually reviewed sample cases. When both the case error rate and dollar error rate of a Secondary review exceed 10 percent, the State is not found to be in substantial compliance and a disallowance is based on extrapolation from the sample to the universe of claims paid for the duration of the AFCARS reporting PUR. The extrapolated disallowance is equal to the lower limit of a 90 percent confidence interval for the population's total dollars in error for the amount of time corresponding to the AFCARS reporting period. Further, a disallowance is also assessed on the basis of the actual amount of claims made during periods other than the PUR found to constitute ineligible or otherwise improper payments for individually reviewed sample cases. Efforts have also been made to identify any underpayments that may exist in the reviewed sample cases.

The Secondary review conducted in Puerto Rico consisted of a review of 150 cases. Fifteen (15) cases were determined to be in error for either part or all of the review period for reasons that are identified in the Case Record Summary section of this report. The case error rate is 9.21 percent. The gross dollar amount of maintenance payments for the review sample is \$227,678, for the PUR, of which \$20,965, represents maintenance payments for the fifteen (15) error cases. This data indicates that Puerto Rico's case error rate did not exceed the 10 percent threshold, and the dollar error rate of 9.21 percent was less than the 10 percent threshold. Therefore, the Commonwealth of Puerto Rico is considered to be in substantial compliance with the title IV-E eligibility requirements as outlined in 45 CFR §1356.71 and §472 of the Social Security Act. We are very pleased to report this finding and add that this represents a major improvement from the findings of PR's initial IV-E review.

Non-error cases with ineligible payments discovered during a review:

Review of the sample cases did not yield any non-error cases with improper payments.

Case Record Summary

The following chart details the fifteen (15) error cases with ineligible payments, reasons for the ineligibility, appropriate citations and the dates of ineligibility for and outside the PUR. Information on the disallowed payments is provided as part of the disallowance letter accompanying this report.

| CASE COUNT | SAMPLE NO. | TITLE IV-E ELIGIBILITY CRITERION | STATUTORY CITATION | INELIGIBLE DATES |
|------------|------------|--|---|--------------------------------------|
| 1 | 1 | Reasonable Efforts to Finalize the Permanency Plan Safety Requirement of Provider | 472(a)(1), 471(a)(15)(B)(ii) and (C) 471(a)(20) and 475(1) | 3/05—4/05 5/1/06—Present |
| 2 | 19 | Placement in a Licensed Foster Care Facility | 471(a)(3),(b), and (c) | 4/2/06—6/5/06 |
| 3 | 60 | Reasonable Efforts to Finalize the Permanency Plan | 472(a)(1), 471(a)(15)(B)(ii) and (C) | 5/06—7/06 |
| 4 | 61 | Reasonable Efforts to Finalize the Permanency Plan Placement in a Licensed Foster Care Facility | 472(a)(1), 471(a)(15)(B)(ii) and (C) 472(a)(3),(b), and (c) | 6/06—Present 4/28/06—11/29/06 |
| 5 | 65 | Reasonable Efforts to Finalize the Permanency Plan | 472(a)(1), and 471(a)(15)(B)(ii) and (C) | 6/06—Present |
| 6 | 73 | Reasonable Efforts to Prevent Removal Reasonable Efforts to Finalize the Permanency Plan | 472(a)(1), and 471(a)(15)(B)(i) 472(a)(1), 471(a)(15)(B)(ii) and (C) | 2/05—Present 2/05--Present |
| 7 | 94 | Placement in a Licensed Foster Care Facility | 471(a)(3),(b), and (c) | 5/06—6/06 |
| 8 | 118 | Placement in a Licensed Foster Care Facility | 471(a)(3),(b), and (c) | 5/1/06—9/30/06 |
| 9 | 132 | Placement in a Licensed Foster Care Facility | 471(a)(3),(b), and (c) | 4/06—8/31/06 |

| | | | | |
|----|-----|--|--------------------------------------|-----------------|
| 10 | 141 | Reasonable Efforts to Finalize the Permanency Plan | 472(a)(1), 471(a)(15)(B)(ii) and (C) | 8/06—Present |
| | | Placement in a Licensed Foster Care Facility | 472(a)(3),(b), and (c) | 5/25/02—5/31/05 |
| | | Safety Requirements of Provider | 471(a)(20) and 475(1) | 5/25/02—5/31/05 |
| 11 | 143 | Reasonable Efforts to Finalize the Permanency Plan | 472(a)(1), 471(a)(15)(B)(ii) and (C) | 7/06—Present |
| | | Placement in a Licensed Foster Care Facility | 472(a)(3),(b), and (c) | 1/23/06—2/28/06 |
| 12 | 147 | Contrary to the Welfare | 472(a)(1) | 9/29/00—Present |
| | | Reasonable Efforts to Prevent Removal | 472(a)(1), and 471(a)(15)(B)(i) | 9/29/00—Present |
| | | Reasonable Efforts to Finalize the Permanency Plan | 472(a)(1), 471(a)(15)(B)(ii) and (C) | 9/29/00—Present |
| 13 | 150 | Reasonable Efforts to Finalize the Permanency Plan | 472(a)(1), 471(a)(15)(B)(ii) and (C) | 4/06—5/06 |
| 14 | 156 | Safety Requirements of Provider | 471(a)(20) and 475(1) | 4/1/06—5/31/06 |
| 15 | 157 | Placement in a Licensed Foster Care Facility | 471(a)(3),(b), and (c) | 4/06—8/31/06 |

Areas in Need of Improvement

While Puerto Rico was found in substantial compliance with the title IV-E eligibility requirements, the following are areas in need of improvement, as evidenced through the case file review.

Removal Pursuant to a Court Order - Removal of the child from the home must be pursuant to a judicial determination or a voluntary placement agreement. A child removed pursuant to a court order, must have a judicial determination to the effect that continuation of residence in the home will be contrary to the welfare, or that the placement will be in the best interest of the child and that reasonable efforts to prevent removal were made (or were not required) to be made. Judicial determinations must be made in a timely manner in a valid court order. [Statutory Citation: 472(a) (1), 471(a) (15) (B) (I); Regulatory Citation: §1356.21]

Contrary to the Welfare/Best Interest of the Child

For a child who enters care prior to March 27, 2000: If the removal order does not contain the judicial determination regarding “contrary to the welfare”, the requisite finding may result from court proceedings that are initiated (the petition filed) no later than 6 months from the date the child is removed from home.

For a child who enters care on or after March 27, 2000: The judicial determination regarding “contrary to the welfare” must be made in the *first* order that sanctions the child’s removal from home, even if the order is an emergency “pick-up” order. The *first* order is the order that stems from the court hearing related to the removal. The determination must be child-specific and may not merely reference State statutes governing removals.

Of the fifteen (15) error cases, one (1) case was determined ineligible for FFP because the first court order did not contain a Contrary to the Welfare or Best Interest of the Child determination, as required for the purpose of title IV-E eligibility, for a child who enters care after March 27, 2000.

Reasonable Efforts to Prevent Removal

For a child who enters care prior to March 27, 2000: The judicial determination that reasonable efforts were made to prevent removal *or* that reasonable efforts were made to reunify the child and family satisfies the reasonable efforts requirement. If the eligibility criterion is not satisfied, the child is not eligible for title IV-E funding for the duration of the foster care episode.

For a child who enters care on or after March 27, 2000: The judicial determination that reasonable efforts to prevent removal were made (or were not required) must be made no later than 60 days from the date of the child's removal from the home. Of the fifteen (15) error cases, two (2) cases were determined ineligible for FFP because the court order did not contain a reasonable efforts determination regarding the State’s efforts to maintain the family unit and prevent the unnecessary removal of the child from the home. For the majority of the cases reviewed, judicial determinations of “Reasonable Efforts to Prevent Removal” were made in the court order by referencing specific sections of the petition, which clearly addressed efforts made by the agency. However, that was not the case for the two (2) error cases, as the court orders either did not make specific reference to sections of the petition addressing reasonable efforts made by the agency; the petition itself did not contain the required language; or the court order was not included as part of the file.

Ongoing Judicial Activity - [Statutory Citation: 472(a)(1), 471(a)(15)(B)(ii) and (C) Regulatory Citation: 1356.21(b)(2)] - In order for a child to be eligible for title IV-E payments, there must be a judicial determination that reasonable efforts were made to finalize the child's permanency plan that is in effect. The permanency plan goal may be: reunification, adoption, legal guardianship, placement with a fit and willing relative, or another planned permanent living arrangement. The judicial determination that the agency has made reasonable efforts to finalize the permanency plan must be made no later than twelve (12) months from the date on which the child is considered to have entered foster care and at least once every twelve (12) months thereafter, while the child is in foster care. If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within this timeframe, the child is ineligible at the end of the twelfth (12) month from the date the child was considered to have entered foster care or at the end of the month in which the subsequent judicial determination of reasonable efforts was due. The child remains ineligible until such a judicial determination is made. Subsequent judicial determinations of "reasonable efforts to finalize" must occur at regular twelve (12) month intervals and no later than twelve (12) months from the month in which the prior determination actually is obtained. If the judicial determination of "reasonable efforts to finalize" is not made or is not timely, the child becomes ineligible from the time the finding is due and remains ineligible until such a judicial determination is made.

Reasonable Efforts to Finalize the Permanency Plan

It is Puerto Rico's policy to judicially review all foster care cases on a quarterly basis, a practice which was evidenced throughout the review. For the majority of the cases, the judicial determinations of reasonable efforts to finalize the permanency plan were reflected in the court orders as a complete list of the services provided by the agency, with the judge's approval and recognition. However, of the fifteen (15) cases found in error, nine (9) cases were found ineligible for FFP because either: (1) the case record did not contain the required judicial determination due within the PUR; or, (2) the court order offered no indication that the agency's efforts to finalize the plan had been reviewed or recognized by the court.

Placement in Licensed Home or Facility - [Statutory Citation: 1356.71(d) (1) (IV), Regulatory Citation: 1355.20] In order to receive Federal financial reimbursement for foster care payments made on behalf of a child, the child must be placed in a facility that is licensed and meets all of the State agency standards of full licensure or approval. The documentation of full licensure can be satisfied by the certificate of licensure/approval or a letter of approval. Effective September 28, 2000, full licensure must be met by all providers, including those licensed or approved by a child-placing agency. The license must show that the foster family home or child care institution is licensed for the duration of the child's placement.

A licensed or approved facility may be a family foster home, group home, private child care institution or public child care institution which accommodates twenty five (25) or fewer children. Children placed in detention facilities, forestry camps, training schools or other facilities operated primarily for the detention of children determined to be delinquent are not eligible for title IV-E foster care maintenance payments. For each case being reviewed, the State agency must make available a licensing file which contains the licensing history, including a copy of the certificate of licensure/approval or letter of approval, for each of the child's foster care providers.

Of the fifteen (15) error cases, eight (8) cases were found ineligible for FFP because either: (1) the foster family home was not fully licensed for a period when a title IV-E payment was made during the PUR, having been issued a six (6) month certification pending completion of one or more licensing requirement; (2) the foster family home license or certification could not be produced in order to verify its validity for title IV-E eligibility. One (1) case was found in error and ineligible for FFP because the facility where the child was placed was licensed by the Department of Mental Health, with a fifty (50) bed capacity.

Safety Requirements of Provider - [Statutory Citation: 471(a)(20), 475(1); Regulatory Citation: 1356.30] In all cases where the State does not opt out of the criminal records check requirement, as it is the case for Puerto Rico, the licensing file for that foster or adoptive family must contain documentation that verifies that safety considerations with respect to the caretaker(s) have been addressed. In addition, in order for a child care institution to be eligible for title IV-E funding, the licensing file for the institution must contain documentation which verifies that safety considerations with respect to the staff of the institution have been addressed.

Of the fifteen (15) cases found in error, three (3) cases were found ineligible for FFP because it was determined that documentation regarding completion of the criminal history record check process was unavailable for foster parents, or employees of the child caring institution, for a period encompassing the PUR.

Systemic Area In Need of Improvement

The following item represents a systemic issue identified through the Secondary title IV-E Foster Care Eligibility Review where improvement is recommended as part of the continuing efforts to enhance operations. While this area does not directly relate to any of the cases found in error, it should be addressed as it could potentially increase the title IV-E eligibility claims for Puerto Rico.

Change of Placement – Return to Foster Care: Puerto Rico’s practice is to permanently end title IV-E eligibility for children who temporarily change placement to non-eligible facilities (e.g. Juvenile Detention Centers, hospitals, mental health institutions, etc.). It is appropriate to suspend IV-E maintenance payments while the child is placed at the unlicensed or unapproved facility. However, once the child returns to a title IV-E eligible foster care facility, **and** providing he/she continues to be otherwise title IV-E eligible, Puerto Rico should reinstate the child’s IV-E eligibility status, thus allowing for maximization of Federal financial participation.

Strengths and Model Practices

Puerto Rico should be very proud of the major improvements reflected in this Secondary title IV-E review. All of the elements implemented through the PIP resulting from the Primary title IV-E review, were clearly evidenced in the case files, and highly contributed to the large number of non-error case findings. Following are some of the strengths noted during the review through case review and policy as provided:

- Great efforts to prevent removal and/or to reunify children with their families. The practice was well documented in the case records, petitions and court orders. Particularly, the Sentences or “*Sentencias*” and the Minutes or “*Minutas*”, which are two

types of court orders that provide detailed information as to all of the agency efforts, or the reasons why reasonable efforts were not necessary. Of the Puerto Rico Regional Offices from which sample cases were drawn, Caguas and Ponce were highlighted for the best court documentation in terms of explicit, child-specific judicial findings.

- Group homes are held to very high quality standards.
- In accordance with Puerto Rico's Licensing regulations at PL 3, criminal background screenings are to be performed every six (6) months, and the homes are inspected quarterly.
- Adjudicatory hearings or "*Vistas de Ratificación*" are to take place within twenty (20) days of removal of the child. This State judicial practice, which is more restrictive than the title IV-E 60 day requirement, allows for a timely judicial finding of abuse or neglect, as well as subsequent judicial review and expedited movement toward finalizing the permanency plan.
- Permanency hearings, in which the reasonable efforts to finalize findings are reviewed, are required to be conducted every three (3) months, thus exceeding the standard of the twelve (12) month Federal requirement.

Disallowances

The Puerto Rico Secondary title IV-E Foster Care Eligibility Review included a sample of 150 cases with a total dollar value of **\$654,704**. The sample was drawn from a universe of cases that received at least one title IV-E foster care maintenance payment during the six (6) month AFCARS period of April 1, 2006 to September 30, 2006. Based on the results of the review, the Commonwealth of Puerto Rico has been found to be in substantial compliance. However, fifteen (15) cases were determined to be in error and are not eligible for funding under title IV-E foster care program. Therefore, a disallowance in the amount of **\$20,965**, in Federal Financial Participation (FFP) is assessed for the entire period of time that these cases were determined to be in error.