Memorandum

Date OCT 6 1995

From June Gibbs Brown
Inspector General

Subject Review of Rising Costs in the Emergency Assistance Program
(A-01-95-02503)

To
Mary Jo Bane
Assistant Secretary
for Children and Families

Attached is a copy of our final report entitled, "Review of Rising Costs in the Emergency Assistance Program." The objective of the review was to identify the reasons for increased expenditures in the Emergency Assistance (EA) Program.

The EA Program is an optional supplement to the Aid to Families with Dependent Children (AFDC) Program. It is a State's discretion whether or not to implement the EA Program. The purpose of the EA Program is to provide temporary financial assistance and supportive services to eligible families experiencing an emergency. House and Senate Committee reports cited several instances of emergencies which include a child's deprivation of food, housing, utilities, and necessary parental support.

From 1991 to 1994, EA expenditures claimed by the States have increased by about 400 percent, rising from $153 million to $782 million. The EA expenditures are expected to reach over $1 billion in 1996. States, in order to maximize Federal revenue, amended their respective EA Programs to obtain funding for services traditionally State funded. These services, predominantly juvenile justice, tuition, foster care, and child welfare, usually address long-term problems. The broad EA legislation and regulation was a contributing factor in allowing States to shift these costs by amending their EA Programs to lengthen eligibility periods, define emergencies to include services that address long-term problems and, to a lesser extent, set high eligibility income standards. As a result, the States shifted the following categories of costs which represent a significant portion of the increase in EA expenditures:

- costs of facilities for juveniles adjudicated for offenses ranging from major crimes (i.e., murder, attempted murder, armed robbery, and auto theft) to lesser offenses (i.e., truancy, aggressive behavior, and petty larceny);

- costs for tuition for children in Title IV-E foster care with learning problems;

- foster care costs for children who do not meet the requirements for Title IV-E;
- child welfare costs which are in excess of Titles IV-B and XX caps; and
- a retroactive claim by one State for administrative costs which were previously funded under Title XX.

One State in our review claimed EA for hospital care services. Under this State's EA Program, hospital care is reimbursed at total charges. Our concern rests with this reimbursement policy the State has adopted. In other Federal health care programs, similar hospital care is reimbursed at amounts less than total charges. As the current reimbursement policy is inconsistent with other Federal health care programs, reimbursement under EA should be limited to amounts less than total charges.

We recommend that the Administration for Children and Families:

(1) support legislation that would either cap the Federal share of EA expenditures or include the Program as part of a block grant;

(2) revise or rescind its current policies allowing the shifting of costs to the EA program especially where such costs have been borne traditionally by the States. In this regard, the eligibility period should be limited; and

(3) issue policy guidelines requiring States to reimburse hospital care at amounts less than total charges.

In response to our draft report, the Administration for Children and Families (ACF) agreed that there is an urgent need to control the rapid escalation of EA expenditures. Further, ACF agreed with our recommendation to support capping EA expenditures. The ACF stated it fully intends to take action to address inappropriate State practices. As such, on September 12, 1995, ACF issued Action Transmittal ACF-AT-95-9 which discontinues Federal financial participation under the EA Program for costs of providing benefits and services to children involved in the juvenile justice system. As a result of this action, estimated annual savings of over $240 million can be realized for three of the States we reviewed. Subsequent to the issuance of our draft report, the House and Senate passed welfare reform bills which would eliminate the

existing statutory language of the EA program and replace EA, AFDC, and other related programs with a block grant. Finally, in light of ACF's action and the passage of welfare reform bills by Congress, we believe ACF should alert the Congress to these significant savings for their consideration in establishing spending levels for either a cap or a block grant.

The ACF, however, disagreed with several aspects of our draft report. Specifically, ACF: (1) expressed concerns over the inference that it administered the EA Program in violation of the congressional intent, (2) disagreed with our recommendation to revise or rescind policies regarding foster care and child welfare costs and (3) requested additional information regarding reimbursement of hospital costs. We continue to believe that the types of services described in this report exceed what the Congress intended to cover under the EA Program. As stated in the report, we believe the EA policies should be revised or rescinded because foster care claimed by the States is long-term, whereas the legislative intent of EA is to provide short-term assistance not otherwise met. With regard to child welfare costs, it seems unreasonable that States should be able to claim the costs in excess of the cap established by Congress to define the limit of Federal funding by shifting them to the EA program. Finally, we have included in the report additional information regarding reimbursement of hospital costs.

Please advise us within 60 days on actions taken or planned on our recommendations. If you have any questions, please call me or have you staff contact John A. Ferris, Assistant Inspector General for Administrations of Children, Family, and Aging Audits, at (202) 619-1175. We want to express our thanks to your staff for their assistance in completing this review.

To facilitate identification, please refer to the Common Identification Number A-01-95-02503 in all correspondence relating to this report.

Attachment

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF RISING COSTS IN THE EMERGENCY ASSISTANCE PROGRAM

JUNE GIBBS BROWN
Inspector General

OCTOBER 1995
A-01-95-02503

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EXECUTIVE SUMMARY

The objective of our review was to identify reasons for increased expenditures in the Aid to Families with Dependent Children (AFDC) Emergency Assistance (EA) Program. The EA expenditures[1] increased by over 400 percent or $600 million from Fiscal Year (FY) 1991 to 1994. Information available at the Administration for Children and Families (ACF) shows that EA expenditures will exceed $1 billion by FY 1996 or about a 550 percent increase from FY 1991 EA expenditures. We found that ACF approved State plan amendments which enabled States to maximize Federal revenue by obtaining EA funding for services traditionally State funded. These services, predominantly juvenile justice, tuition, foster care, and child welfare, usually address long-term problems while EA was intended to address temporary emergencies. We recommend that ACF support capping EA expenditures or consider a block grant and that ACF revise or rescind its policies that allow States to claim the types of costs noted.

While not all States authorize these services, if additional States elect to amend their State Plans and claim these services under their respective EA Programs, the potential exists for EA expenditures to continue to escalate significantly. For example, the Texas Controller of Public Accounts issued a report from *The Texas Performance Review* dated November 1994, recognizing Colorado and California's use of EA funds for juvenile correction. Accordingly, the Texas Controller recommended that its EA State plan be amended to include youth correction activities.

The EA Program, authorized under section 406(e) of Title IV-A of the Social Security Act (the Act) as an optional supplement to the AFDC Program, was intended to provide short-term financial assistance to needy families with children experiencing an emergency. Such assistance was intended to cover services such as rent, utility arrearage, household appliances, food, and clothing. The broad EA legislation and regulation was a contributing factor in allowing States to shift these costs by amending their EA Programs to lengthen eligibility periods, define emergencies to include services that address long-term problems and, to a lesser extent, set high eligibility income standards. These shifted costs include:

- costs of facilities for juveniles adjudicated for offenses ranging from major crimes (i.e., murder, attempted murder, armed robbery, and auto theft) to lesser offenses (i.e., truancy, aggressive behavior, and petty larceny);

- tuition payments for foster care children with behavior problems and emotional disturbances which could not be handled by the public school;

[1] EA expenditures, as presented throughout this report, represent amounts claimed by States for ACF's review and approval. As of the date of our audit, approximately $258 million is deferred and pending further action by ACF.

- foster care costs, which did not meet the requirements under Title IV-E of the Act;

- child welfare service costs in excess of the capped amounts under Titles IV-B and XX of the Act or State appropriations; and

- child protective service workers' administrative costs in excess of the capped amount under Title XX of the Act (deferred claim).

We believe that many of the expanded, long-term services being claimed by States go well beyond anything originally envisioned by the Congress. It should be noted that ACF attempted to address the issues of this report on at least three separate occasions. Specifically, (1) in 1987, ACF published in the Federal Register a notice of proposed rule-making that would have limited EA to assistance furnished to one period of 30 consecutive days or less in 12 consecutive months, but the Congress placed a moratorium on the proposed rule from 1987 to 1992, (2) on February 21, 1992, ACF submitted a bill to amend the Act to specify the purposes and duration of EA, and (3) more recently a legislative proposal to cap the EA Program was included in the Administration's welfare reform legislation, The Work and Responsibility Act of 1995. However, the Congress barred the first and failed to act on the latter two legislative proposals. More recently, the House and Senate passed bills, H.R. 4 and S. 1120, respectively, that would include the EA Program in a single capped entitlement to States.

One State in our review claimed EA for hospital care services. Under this State's EA Program, hospital care is reimbursed at total charges. Our concern rests with this reimbursement policy the State has adopted. In other Federal health care programs, similar hospital care is reimbursed at amounts less than total charges. As the current reimbursement policy is inconsistent with other Federal health care programs, reimbursement under EA should be limited to amounts less than total charges.

We recommend that ACF:

(1) support legislation that would cap the Federal share of EA expenditures or include the EA Program as part of a block grant;

(2) revise or rescind its current policies allowing the shifting of costs to the EA program, especially where such costs have been borne traditionally by the States. In this regard, ACF should limit the EA eligibility period for assistance; and

(3) issue policy guidelines requiring States to reimburse hospital care at amounts less than total charges.

In response to our draft report, ACF agreed that there is an urgent need to control the rapid escalation of EA expenditures. Further, ACF agreed with our recommendation to support capping EA expenditures. The ACF stated it fully intends to take action to

address inappropriate State practices. As such, on September 12, 1995, ACF issued Action Transmittal ACF-AT-95-9 which discontinues Federal financial participation under the EA Program for costs of providing benefits and services to children involved in the juvenile justice system. As a result of this action, estimated annual savings of over $240 million can be realized for three of the States we reviewed. Subsequent to the issuance of our draft report, the House and Senate passed welfare reform bills which would eliminate the existing statutory language of the EA program and replace EA, AFDC, and other related programs with a block grant. Finally, in light of ACF's action and the passage of welfare reform bills by Congress, we believe ACF should alert Congress to these significant savings for their consideration in establishing spending levels for either a cap or a block grant.

The ACF, however, disagreed with several aspects of our draft report. Specifically, ACF (1) expressed concerns over the inference that it administered the EA Program in violation of the congressional intent, (2) disagreed with our recommendation to revise or rescind policies regarding foster care and child welfare costs and (3) requested additional information regarding reimbursement of hospital costs. We continue to believe that the types of services described in this report exceed what the Congress intended to cover under the EA Program. As stated in the report, we believe the EA policies should be revised or rescinded because foster care claimed by the States is long-term, whereas the legislative intent of EA is to provide short-term assistance not otherwise met. With regard to child welfare costs, it seems unreasonable that States should be able to claim the costs in excess of the cap established by Congress to define the limit of Federal funding by shifting them to the EA program. Finally, we have included in the report additional information regarding reimbursement of hospital costs.

INTRODUCTION

BACKGROUND

The Emergency Assistance (EA) Program, established by the 1967 amendments to the Social Security Act (the Act) (Public Law 90-248) as an optional supplement to the Aid to Families with Dependent Children (AFDC) Program, is a federally sponsored State administered program. The House and Senate Committee reports issued in 1967 stated that the EA legislation had the objective of providing States with the mechanism, which "frequently is unavailable under State programs" at that time, to act quickly in the event of an emergency. As such, we believe the Congress did not intend for the Federal Government to financially participate in traditionally State-funded programs.

The purpose of the EA Program is to provide temporary financial assistance and supportive services to eligible families experiencing an emergency. The House and Senate Committee Reports both define eligible families as those on AFDC or generally of similar circumstances, lacking available resources. Furthermore, the House Committee Report[2] states that "the payment or service must be necessary in order to meet an immediate need that would not otherwise be met."

In defining what type of assistance States could provide in an emergency, the Congress worded the EA language broadly. It provided that such assistance can include money payments, payments in kind, or such other payments as a State agency may specify, including medical or remedial care. The Congress limited the duration of EA to assistance "furnished" for a period not in excess of 30 days in any 12-month period. However, the Department's implementing regulations, at Title 45 of the Code of Federal Regulations (CFR) section 233.120(b)(3), in effect lengthened the period of assistance by providing that Federal matching is available for EA which the States "authorize" during one period of 30 days in any 12 consecutive months including payments which are to meet needs which arose before such 30-day period or are for such needs as rent which extend beyond the 30-day period.

Further, legislation provided that EA could only be provided to or on behalf of a needy child under the age of 21 and any other member of the household in which: (1) such child is living (or has been living in the prior 6 months) with a specified relative, (2) the child is without available resources to meet the emergency, (3) the assistance is necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and (4) the destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment.

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[2] H.R. Rep. No. 544, 90th Cong., 1st Sess. 109 (1967).

When the Administration for Children and Families (ACF) became aware that EA funds were used to provide temporary housing to families for long periods, it issued a proposed rule in the December 14, 1987 Federal Register to limit EA to meet needs arising during a 30-day period. In response to ACF's proposed rule, the Congress passed a moratorium prohibiting implementation of these regulations because of its concerns surrounding the widespread homelessness of families with children and the difficulty of governments at all levels in dealing with this homelessness. Upon extending the moratorium for an additional year, the Congress also required the Secretary to report on the policy governing the use of EA funds and to formulate recommendations on how the EA Program can better meet the emergencies of needy families and eliminate the practice of housing families in "welfare hotels." In response to the Congress, the Secretary's report submitted on July 3, 1989 recommended a prohibition of EA beyond the 30-day period while continuing EA to prevent evictions and utility cutoffs and assist homeless families to secure permanent housing. The Congress, however, continued the moratorium through Fiscal Year (FY) 1991 but authorized the Secretary to issue a revised proposed regulation that incorporates the recommendations included in the Secretary's report.

Acting upon the authority given by the Congress, ACF developed a proposed regulation and submitted it internally to the Department; however, on February 21, 1992, the Department elected to submit a draft bill to amend the Act to reflect the recommendation contained in the Secretary's report rather than changing the regulation. The Congress did not act on this proposed bill thus continuing to provide the States the opportunity to expand EA eligibility periods beyond the 30-day period. More recently, The Work and Responsibility Act of 1995 addressed the dramatic rise in costs of the EA Program by including a legislative cap on expenditures as part of the President's welfare reform bill. The House and Senate of the 104th Congress have recently passed bills, H.R. 4 and S. 1120, that would include the EA Program in a single capped block grant to the States. Implementation of either bill could provide a solution to rising EA costs.

From the late 1970s through 1991, the Federal share of EA expenditures ranged from approximately $40 million to $153 million. Since 1991, EA expenditures have increased

dramatically (See Figure 1), rising from about $153 million to projected levels of more than $1 billion by FY 1996. Also, from 1991 to 1994, the number of States/Territories with EA Programs expanded from 33 to 50.

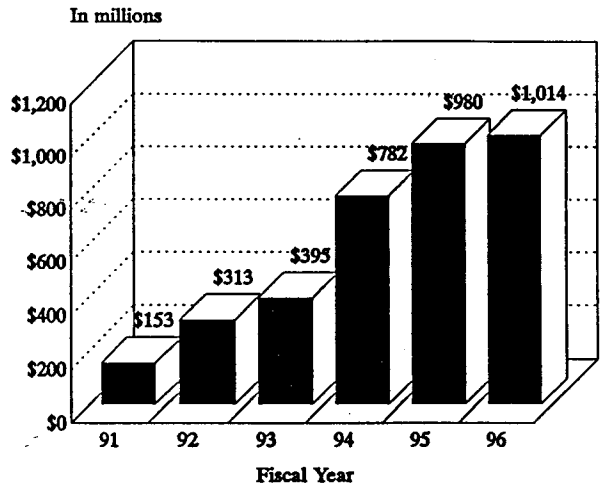

Figure 1 - EA Expenditures: Actual for FYs 1991 - 1994 and Projected for FYs 1995 - 1996. Note: The $782 million in FY 1994 includes expenditures from two previous years.

SCOPE

We conducted our review in accordance with generally accepted government auditing standards. The objective of this review was to identify the reasons for increased expenditures in the EA Program. The audit period covered by our review included actual expenditures for FYs 1991 through 1994 and projected expenditures for FYs 1995 and 1996.

We limited our consideration of management controls to those controls applicable to the Federal administration of the EA Program. These management controls included ACF's review and approval of State plan amendments and EA expenditure reports.

To accomplish our objectives, we:

- researched applicable Federal laws and regulations;
- held meetings with personnel from ACF's Central Office and Regional Offices to discuss the administration of the EA Program;
- judgmentally selected States with significant EA expenditures for on-site review (six States) or survey via questionnaire (five States) (see Exhibit I);
- reviewed State plan amendments and EA expenditure reports for the 11 States;

- traced EA expenditures from the quarterly reports to the accounting records for six States selected for on-site review;
- reviewed various correspondence between ACF and the States;
- held meetings with State officials responsible for the administration of the EA Program for six States selected for on-site review;
- reviewed State laws, policies and procedures for the EA Program for six States selected for on-site review; and
- for those States surveyed via questionnaire, reviewed responses and conducted follow-up discussions with the States as needed (we did not independently verify State responses).

As part of this review, we also examined the eligibility determination procedures used by six States. The results of this aspect of the review will be included in a separate report to ACF.

We conducted our field work between January and June 1995 at the ACF Central Office in Washington, D.C., various ACF regional offices, and the following States for on-site review - California, Colorado, Connecticut, Kansas, Massachusetts, and New York. We also surveyed via questionnaire the following States - Arizona, Illinois, Indiana, Missouri, and Pennsylvania.

The ACF's written comments, dated September 18, 1995, are appended in this report (see Appendix) and are addressed on page 17.

FINDINGS AND RECOMMENDATIONS

INCREASED EA EXPENDITURES

The objective of our review was to identify the reasons for increased expenditures in the EA Program. We found that ACF approved State plan amendments which enabled States to maximize Federal revenue by obtaining EA funding for services traditionally State funded. These services, predominantly juvenile justice, foster care including tuition, and child welfare, usually address long-term problems while EA was intended to address temporary emergencies. The broad EA legislation and regulation was a contributing factor in allowing States to shift these costs by amending their EA Programs to lengthen eligibility periods, define emergencies to include services that address long-term problems and, to a lesser extent, set high eligibility income standards.

The two key actions, lengthening eligibility periods and defining emergencies to address long-term problems, contributed significantly to more than a 400 percent increase, amounting to $600 million, in Federal EA expenditures from FY 1991 through FY 1994. Further, States have projected EA expenditures to exceed $1 billion in FY 1996 (see Exhibit II). Our recommendations are aimed at controlling the escalating costs of the EA Program.

This review addresses the following questions.

- What was the purpose of the EA Program? - Legislative Intent
- What are States using the EA Program for today? - Shifting Costs
- How are States maximizing Federal Financial Participation (FFP)? - Longer EA Eligibility Periods, Definitions of Emergencies, and High Income Standards
- What can be done to control the expansion in the EA Program ? - Options

WHAT WAS THE PURPOSE OF THE EA PROGRAM

The congressional intent behind passage of the EA legislation was to provide States with a mechanism to act quickly when an emergency occurs. The House and Senate Committee Reports provide that EA was intended to be used as a temporary measure to help families, such as those on AFDC or generally of similar circumstances, lacking available resources to meet an emergency. While the statute does not itself define emergency, these reports cite several instances for which EA could be used such as when (1) a family faces eviction, (2) utilities are turned off, (3) an alcoholic parent leaves children without food, (4) a child is suddenly deprived of his/her parents by their accidental deaths, or (5) the State finds that conditions in the home are contrary to the child's welfare.

In defining what types of assistance States could provide in these emergencies, the Congress worded the EA language broadly. It provided that such assistance can include money payments, payments in kind, or such other payments as a State agency may specify, including medical or remedial care. The Congress did, however, limit the duration of EA to assistance "furnished" for a period not in excess of 30 days in any 12-month period. Title 45 CFR Section 233.120(b)(3), however, lengthened the period of assistance by providing that Federal matching is available for EA which the States "authorize" during one period of 30-days in any 12 consecutive months including payments which are to meet needs which arose before such 30-day period or are for such needs as rent which extend beyond the 30-day period. Further, it required that such assistance could only be provided to or on behalf of a needy child under the age of 21 and any other member of the household in which he/she is living when:

- such child is or has been living within the past 6 months with a specified relative;
- such child is without available resources to meet the emergency;
- the assistance is necessary to avoid destitution of such child or to provide living arrangements in a home for such child; and
- the destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment.

WHAT ARE STATES USING THE EA PROGRAM FOR TODAY

The States have shifted costs to the EA Program which were previously funded entirely by the States, thus receiving 50 percent FFP for these services. These services, which include juvenile justice, tuition, foster care, and child welfare services, are typically not temporary in nature and, in our opinion, extend beyond the original intent of the EA Program. While many services were shifted to the EA Program, the four services noted above have had the greatest impact on the EA Program. In addition, one State amended its cost allocation plan to claim administrative costs previously funded under the Title XX program and another State claimed hospital care for recipients who are not eligible for Medicaid (neither of these claims have been paid by ACF to date).

JUVENILE JUSTICE

Two States shifted and one State plans to shift costs, i.e., administrative and probation officers' salaries, room and board in detention or other facilities, electronic monitoring devices, and counseling services, for children in the juvenile justice system from State-funded programs to the EA Program. In these States, some of the children committed serious crimes such as murder, attempted murder, aggravated assault, sexual assault, robbery, motor vehicle theft, and burglary.

In another State we found that a State-funded program was switched to the EA Program by including costs for children who were deemed to be persons in need of supervision. These children, while not committing crimes as serious as in the three States above, have been involved in offenses such as assault, verbal and physical threats of teachers, alleged alcohol and drug use, and truancy, and as a result have been placed in group homes which they must report to each night.

We believe the costs of maintaining juveniles and persons in need of supervision who have been adjudicated by the court do not meet the intent of the program. The intent of EA, according to legislative history, is to address the basic needs of families with children by providing housing, food, clothing, etc. in the event of an emergency. Furthermore, providing juvenile justice services is the responsibility of the State or county. For example, in California, section 850 of its Penal Code establishes that every county shall provide and maintain a suitable house or place referred to as juvenile hall for the detention of wards and dependent children of the juvenile court and of persons alleged to come within the jurisdiction of the juvenile court. Prior to July 1, 1993, when juvenile justice services were not included in California's EA Program, these services were 100 percent county funded. After July 1, 1993, the costs of these services were shared 50 percent each by the EA Program (Federal share) and county government.

Our review of the States' EA Programs identified two types of facilities, secured and unsecured. Based on discussions with State program officials and our consideration of the mission of the juvenile justice system, we believe that most children are in a facility secured to some degree. However, at least one State classifies some of its facilities as unsecured. For example, California classifies some of its facilities as being unsecured because there are no physical barriers restricting juveniles. However, on-site probation officers/counselors restrict the movements and activities of the juveniles within the confines of the facility.

The ACF position on juvenile justice costs evolved over time. Initially, ACF approved three States' plan amendments providing EA for secured facilities as well as unsecured facilities. Subsequently, ACF notified three other States that costs for secured facilities are unallowable for FFP, and are reconsidering a previously approved State plan amendment for another State. We believe the costs for juvenile justice services appear to be unreasonable under the EA Program.

In any event, applying ACF's current policy concerning secured facilities, a portion of California's claim would be unallowable. In our review of 20 juvenile justice cases in California, we noted that the EA Program was paying for services in facilities that met the strict definition of secured facilities. In this respect, California claimed as EA services $202,837 for the 20 cases in our review. Of this, $132,570 (Federal share of $66,285) was for services in a secured facility.

Of the approximately $2 billion total EA expenditures projected for FYs 1995 and 1996, 24 percent of the EA expenditures relate to juvenile justice for these States (see Exhibit III). The shifting of these juvenile justice system costs to the EA Program resulted in

the following four States claiming and projecting to receive about $631 million in FFP for FYs 1994 through 1996.

JUVENILE JUSTICE COSTS INCLUDED IN EA EXPENDITURES

STATE	FY 1994 -Actual (in millions)	FY 1995 -Projected (in millions)	FY 1996 - Projected (in millions)	TOTAL (in millions)
CA	$118	$121	$121	$360
PA	not available	45	45	90
CO	7	not available	not available	7
NY	26	73	75	174
TOTAL	$151	$239	$241	$631

TUITION

Included in New York's foster care costs of $73 million for FY 1994 (see chart under Foster Care) are tuition costs of $45 million for Title IV-E and some non IV-E eligible children in institutional settings, similar to boarding schools. These children have long-term special educational needs such as attention deficit disorders, behavioral problems, and emotional disturbances. Further, some of the children have been involved in assault, theft, truancy, and probation violations. Because these problems cannot be handled adequately in a public school, the education is provided at the institutions in accordance with Federal regulations and New York State law which entitle all children to a free and appropriate education. Some children, in addition to being provided education, may receive related services such as audiology, counseling, occupational therapy, physical therapy, speech pathology, and other developmental or corrective support services and access to recreational activities. These services are the special needs education services identified in Title 34 CFR Part 300 which describes the United States Department of Education's program for Special Education and Rehabilitative Services.

According to State officials, the majority of children covered by the tuition payments are currently in the Title IV-E Foster Care Program. These State officials indicated that the tuition costs are not allowable under Title IV-E and, therefore, were claimed under the EA Program. Before being shifted to the EA Program, these costs were the responsibility of State and local governments as part of the free and appropriate education for children. Therefore, as this education is long-term and is the responsibility of the State, we do not believe that the tuition costs are within the intent of the EA Program.

FOSTER CARE

One of the most common type of State-funded costs shifted to the EA Program by the States reviewed is foster care costs for children who do not qualify under Title IV-E of the Act. To qualify for Title IV-E, the child must (1) be removed from an AFDC eligible home and (2) placed either voluntarily or by a court order in an approved foster care facility. In our opinion, the Congress did not intend the Federal Government to participate in the cost of all foster care. Therefore, if the child is not eligible for Title IV-E, the proper care of the child should revert to the State, as intended by the Title IV-E legislation.

Foster care placements are designed by their nature to provide a home for the child until such time as permanent placement is found, which potentially could be a long-term process. However, the House and Senate Committee Reports state that EA is to provide short-term assistance not otherwise met. States in our review claimed EA for up to the maximum period allowed by the State plan, usually 12 months, because the States' considered the emergency continuous. Two States have no limit to their EA eligibility period. As such, foster care costs could be claimed under EA for an indefinite period of time contrary to the intent of the EA legislation to address temporary emergencies.

Of the approximately $2 billion total EA expenditures projected for FYs 1995 and 1996, 12 percent of the EA expenditures relate to foster care for these States (see Exhibit III).

As shown in the following chart, shifting foster care costs to the EA Program resulted in the following four States claiming and projecting to receive about $312 million in FFP for FYs 1994 through 1996.

FOSTER CARE COSTS INCLUDED IN EA EXPENDITURES

STATE	FY 1994 - Actual (in millions)	FY 1995 - Projected (in millions)	FY 1996 - Projected (in millions)	TOTAL (in millions)
NY	$73	$57	$50	$180
PA	not available	35	35	70
AZ	1	10	10	21
CT	3	16	22	41
TOTAL	$77	$118	$117	$312

CHILD WELFARE SERVICES

Under this broad category, States are providing services such as child protective care, day care, counseling, after care (case management, transportation, information, and

referrals), emergency shelter, and parenting training. Previously, funding for these types of services was derived from Titles IV-B and XX of the Act or State appropriations.

Historically, Title IV-B provides Federal funds to States for child welfare services or treatment-oriented services while Title XX provides funds to States for social services. Currently, both Titles IV-B and XX have funding caps which four States in our review have exceeded. By shifting the costs of these services to the EA Program, States are claiming costs which exceed the capped amounts. In establishing caps for Titles IV-B and XX, we believe the Congress had defined the amount of Federal funds that should be used for these purposes. It seems unreasonable that States should be able to claim the costs in excess of the cap established by Congress to define the limit of Federal funding by shifting them to another Federal program, the EA Program.

Of the approximately $2 billion total EA expenditures projected for FYs 1995 and 1996, 25 percent of the EA expenditures relate to child welfare for these States (see Exhibit III). Shifting these child welfare costs to the EA Program resulted in the following four States claiming in FY 1994 and projecting to receive in FYs 1995 and 1996 about $530 million in FFP.

CHILD WELFARE SERVICES COSTS INCLUDED IN EA EXPENDITURES

STATE	FY 1994 - Actual (in millions)	FY 1995 - Projected (in millions)	FY 1996 - Projected (in millions)	TOTAL (in millions)
PA	not available	$100	$100	$200
NY	9	100	100	209
CA	12	22	26	60
IL	10	23	28	61
TOTAL	$31	$245	$254	$530

ADMINISTRATIVE COSTS

In FY 1994, of New York's total claim of $419 million, more than $230 million were for administrative costs for child protective service workers. This amount, which represents costs incurred as far back as FY 1992, duplicates a claim also filed under the Title IV-E Program. These costs represent activities undertaken throughout the Title IV-E and EA eligibility determination process including, but not limited to, such activities as: determining the nature, extent, and cause of injuries; risk assessment; preparing/maintaining case record documentation; and processing eligibility forms. While New York maintains that the majority of these activities are allowable under Title IV-E, officials from ACF did not agree. In the meantime, in order to preserve its ability to file a claim in light of a Federal 2-year claiming limitation, New York also claimed these costs under the EA Program. The ACF has not made a final decision as to whether these costs are allowable under the EA Program because of an issue of case-

record retention. While currently a duplicate claim, New York officials indicated that the amount reimbursed under one program will be withdrawn from the other program.

These costs represent one additional example of a State's efforts to maximize Federal funding. In this regard, New York officials stated that these types of costs were previously funded under the Title XX program. As this program is now capped, the State, in its effort to obtain Federal matching funds for the amount over the cap, amended its cost allocation plan to claim these costs under the Title IV-E program and subsequently under the EA Program.

HOSPITAL CARE

Connecticut claimed hospital care provided to needy individuals under its EA Program of more than $6 million[3] in FY 1994 and projects to receive more than $32 million in FYs 1995 and 1996. Under this program, the State determines whether the person receiving hospital care is Medicaid eligible and, if so, will process and pay the claim as a Medicaid claim. If the person is not Medicaid eligible, the claim is submitted to the State agency as an EA claim and paid at total charges. Previously, services to needy EA people who were not Medicaid eligible were only paid from a pool of State funds used to reimburse hospitals for their free care and bad debts.

We believe that ACF should issue policy guidelines requiring States to establish reasonable payment policies. Under its EA Program, Connecticut paid hospital care services at total charges. Conversely, Missouri limits the EA payment for medical care to the Medicaid payment rate. Furthermore, in other Federal health care programs, hospitals are reimbursed at amounts less than total charges, typically the reasonable rates as determined by the administering agency. For example, under the Medicare program, hospital inpatient services are reimbursed at an amount which is based on illness and is typically less than total charges, while hospital outpatient services are reimbursed on a reasonable cost or fee schedule basis. Under the Medicaid program, hospitals are reimbursed at amounts which are no greater than Medicare reimbursement amounts.

We reviewed 41 of the hospital cases[4] and compared the amount claimed under EA to the amount Medicaid would have paid. Using interim FY 1995 Medicaid payment rates, we found that had a requirement been in place to pay at the Medicaid payment rate, Connecticut's EA claim of $68,000 for the 41 hospital cases would have been reduced by approximately 48 percent. As the practice of paying total charges is inconsistent with other health care programs and to reduce the cost of the EA Program, we believe ACF should limit payments to reasonable amounts established by programs such as Medicare

[3] As of the end of our field work, this claim was pending approval by ACF.

[4] These cases were selected by ACF in reviewing the support for Connecticut's EA claim.

or Medicaid. Furthermore, as this is the only State in our review with such a payment practice for this service, it is setting precedent for other States to model after.

HOW ARE STATES MAXIMIZING FEDERAL FINANCIAL PARTICIPATION

By amending their State plans, the States we reviewed have shifted costs to EA from services they historically have funded. Specifically, all 11 States reviewed amended their EA Programs to: (1) lengthen EA eligibility periods and (2) define emergencies to allow the shifting of costs to occur. These are the two key actions taken by States to maximize FFP for costs mentioned above. In addition, several States reviewed set high income eligibility standards. While this allows EA to be provided to non-needy recipients, the impact on the increases in expenditures is not as significant as the two key actions.

LONGER EA ELIGIBILITY PERIODS

We found that, while States originally operated their respective EA Programs with short eligibility periods, several States have recently expanded these periods up to 12 months (see Exhibit IV). In addition, two States define the eligibility period as until the emergency conditions cease to exist. This could equate to an indefinite period of time for services such as foster care or counseling.

The EA legislation allows States to furnish temporary assistance and services for 30 days in any 12 consecutive months. Title 45 CFR section 233.120(b)(3), however, lengthened the period of assistance by providing that Federal matching is available for EA which the States authorize during one period of 30 days in any 12 consecutive months including payments which are to meet needs which arose before such 30-day period or are for such needs as rent which extend beyond the 30-day period.

Previously, we addressed the 30-day issue in a report (A-01-87-02301) in which we reported on this inconsistency between the law and regulations. As a result, ACF reported this issue as a material internal control weakness in the FY 1987 Federal Managers' Financial Integrity Act (FMFIA) Report. The 1994 FMFIA report continues to include this issue.

When ACF became aware that payments for services such as rent were lasting up to 13 months, it attempted to limit services to a maximum of 30 days. The ACF issued a proposed rule to eliminate EA funds for continuing needs. In response, the Congress passed a moratorium prohibiting implementation of these regulations because of its principal concern surrounding the widespread homelessness of families with children and the difficulty of governments at all levels in dealing with homelessness. The basis for the Congress' concern was the application of the proposed regulation, specifically to the provision of housing for the homeless, one example of the continuing needs that would have been precluded under the regulation. Upon extending the moratorium in 1988 for an additional year, the Congress also required the Secretary to report on the policy governing the use of EA funds and to formulate recommendations on how the EA

Program can better meet the emergencies of needy families and eliminate the practice of housing families in "welfare hotels."

The Secretary's report recommended[5] a prohibition of EA beyond the 30-day period while continuing EA to prevent evictions and utility cutoffs and assist homeless families to secure permanent housing. The Secretary's report further pointed out that the Interagency Council on the Homeless would address and propose reforms in the manner which the Federal assistance for temporary housing is provided to homeless families. The Congress, however, continued the moratorium through FY 1991 but authorized the Secretary to issue a revised proposed regulation that incorporates the recommendations included in the Secretary's report. Acting upon this authority ACF developed proposed regulations; however, on February 21, 1992, the Department elected to submit a draft bill to amend the Act to reflect the recommendation contained in the Secretary's report. The Congress did not act on this proposed bill thus continuing to provide the States the opportunity to expand EA eligibility periods beyond the 30-day period.

By providing States the opportunity to lengthen eligibility periods, expenditures have increased under the EA Program. We found that one state, to maximize Federal revenue, increased its eligibility period from 6 months to as long as the emergency exists. This change prompted the State to review foster care cases to identify costs beyond the 6-month period not previously claimed and resulted in a retroactive claim of $7.7 million FFP. To further demonstrate the effect of lengthening eligibility periods on EA expenditures, we examined 20 cases for juvenile justice services in one State to determine how much was expended for a period of 30 days and how much was expended beyond 30 days. We found that had the EA eligibility period been limited to 30 days, the State's claim for EA expenditures for these 20 cases alone would have been approximately 71 percent less than the $203,000 claimed, or approximately $59,000.

DEFINITIONS OF EMERGENCIES

While the Act is silent in defining what emergencies are covered under EA, House and Senate Committee Reports cite several instances for which EA was intended to be used, such as when: (1) a family faces eviction; (2) utilities are turned off; (3) an alcoholic parent leaves children without food; (4) a child is suddenly deprived of his/her parents by their accidental deaths; or (5) the State finds that conditions in the home are contrary to the child's welfare. These emergencies require the states to act quickly to provide appropriate care for the child. The States, however, have defined emergencies in terms so that costs previously not available for FFP can be shifted to the EA Program. The following definitions provide examples of both specific and broad emergencies and the available services to meet the needs of the child:

[5] From the 1989 report entitled *Use of the Emergency Assistance and AFDC Programs To Provide Shelter To Families*

California defined one emergency condition as "a child's behavior that results in the child's removal from the home and a judicial determination that the child must remain in out-of-home care for more than seventy-two (72) hours." This specific definition allows California to claim its juvenile justice costs, including salaries of administrators and probation officers, food, electronic monitoring devices, and counseling, in both secured and unsecured facilities.

New York defines emergencies as ". . . all aid, care and services granted to families with children, including migrant families, to deal with crisis situations threatening the family and to meet urgent needs resulting from a sudden occurrence or set of circumstances demanding immediate attention." As this is such a broad definition, New York does not provide an authorization specific to any one service. Instead, New York authorizes a blanket plan of care making available any of the following services: information referral, counseling, securing family shelter, child care and any other services needed resulting from the emergency.

Colorado defines emergencies as "the removal of a juvenile from his or her home into publicly funded facility for care or supervision; or the risk of the removal of a juvenile from his or her home into a publicly funded facility for care or supervision, as determined by the responsible state official(s) or designee(s)." Again, as this definition is broad, any of the following services could be provided: shelter care, foster family care, residential care, specialized group care, health residential facilities, juvenile detention or correctional facilities, and assistance necessary to enable at-risk children to remain in their homes.

HIGH INCOME STANDARDS

While neither the statute nor longstanding Federal regulations specify the income standards to be used in a State's EA Program, these regulations, reflecting legislative intent, do specify that such child be without available resources to meet the emergency. In this connection, the House and Senate Committee Reports provide that EA was intended to be used to help families on AFDC or those generally of the same circumstances.

As a means test in determining EA eligibility, States have set income standards which applicants are required to meet. We noted, however, that 2 of the 11 States had set high income standards which may undermine the focus of the program on serving needy families.

In California, the income standard is set at 200 percent of its median income level for a family of four which equated to an income standard of $92,800 in 1994. Prior to September 19, 1994, this income standard was measured against the income of the entire family unit. After this date, however, the State changed its

definition of a family unit to a family-of-one. As such, the income of only the child facing the emergency is currently measured against the $92,800.

Colorado set a family income threshold of $75,000 per year.

By setting high income standards, EA is available to a group of non-needy recipients. As a result of lengthening EA eligibility periods, defining emergencies broadly, and setting high income limits for determining eligibility, States amended their respective EA Programs to shift State funded long-term services to the EA Program, thereby maximizing Federal revenue. Consequently, EA expenditures have escalated by over 400 percent from FY 1991 through 1994, or over $600 million. Further, by FY 1996 the States project that EA expenditures will increase to more than $1 billion.

The EA expenditures are escalating at a rapid pace due mainly to three types of costs, juvenile justice, foster care, and child welfare services. As observed above, we believe these services are of a type not initially intended under the EA legislation. These three categories of costs (tuition is included in foster care costs), in only 6 of the 11 States reviewed, represent approximately 61 percent of the total EA expenditures projected for FYs 1995 and 1996 and are a significant reason why EA expenditures have increased and will continue to increase (see Figure 2). The remaining 39 States, which are responsible for 17 percent of the projected expenditures for FYs 1995 and 1996, could also be claiming the same types of costs thereby increasing the 61 percent. While not all States provide the services mentioned throughout this report, if additional States elect to amend their State Plans and claim these services under their respective EA Programs, the potential exists for EA expenditures to continue to escalate significantly. For example; the Texas Comptroller of Public Accounts in a November 1994 performance review report recommended that the State "amend its Emergency Assistance plan to include, as an additional emergency, the Colorado or the California definitions of youth corrections, thereby extending the program to TYC [Texas Youth Commission] and local probation departments."

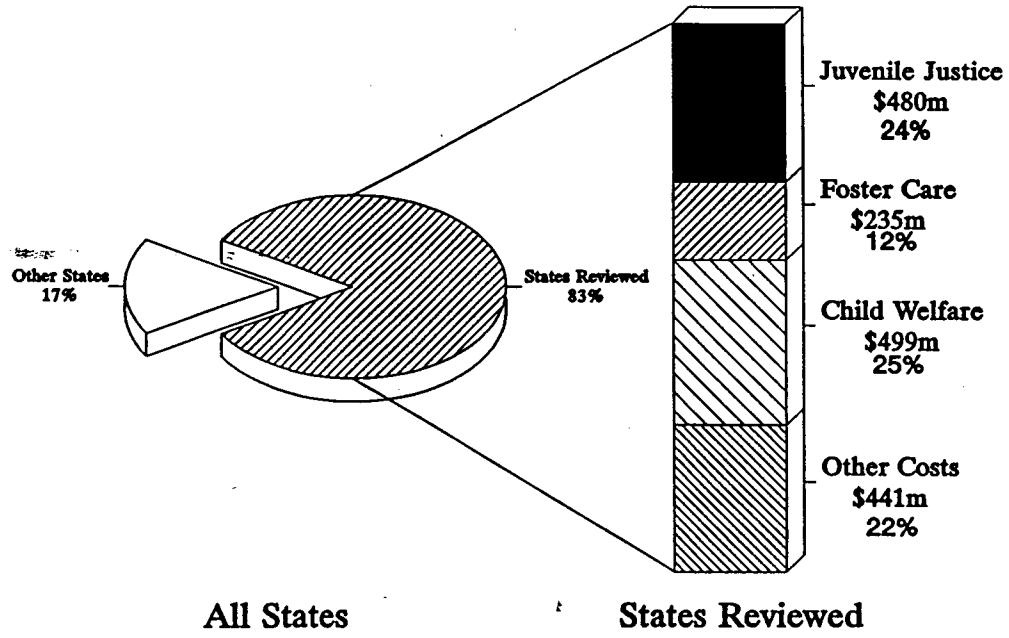

Figure 2- Projected EA Expenditures for FYs 1995 and 1996

WHAT CAN BE DONE TO CONTROL THE EXPANSION OF THE EA PROGRAM

To control the Federal share of EA expenditures, we recommend ACF: (1) support legislation that would cap the Federal share of EA expenditures or include the EA Program as part of a block grant, and (2) revise or rescind its current policies allowing the shifting of costs to EA, especially where costs have been borne traditionally by the States. In this regard, ACF should define the EA eligibility period for assistance.

CAP FEDERAL SHARE/BLOCK GRANT EA PROGRAM

This recommendation would continue to provide States flexibility in designing their respective EA Programs while also providing assurances that the Federal share of EA expenditures is controlled. Whether ACF chooses a cap or block grant, several issues need to be addressed including:

- The methodology for setting initial spending levels for caps and block grants needs to be equitable for all States. The selection of a base year would be crucial in ensuring an equitable disbursement. For example, in FY 1994, many States have been more aggressive in shifting costs to the EA Program while others may not have been as aggressive. As such, using FY 1994 as a base year would probably not produce an equitable disbursement to all States. The methodology should take into

consideration other factors, i.e., populations or relative costs of services, which have affected spending levels for other block grants.

- Our review focused on the programmatic costs of EA and not on administrative expenses claimed by States over and above these program costs. As the definition of program versus administrative costs is open to State interpretation, States may attempt to circumvent a cap/block grant on program costs by claiming these program costs as administrative costs. Therefore, if ACF proposes a cap or block grant, it would need to expand the cap/block grant to include administrative costs.

REVISING OR RESCINDING CURRENT POLICIES ALLOWING STATES TO SHIFT COSTS

This recommendation would encompass several issues on which ACF would need to focus. First and foremost, ACF needs to revise or rescind current policies allowing the shifting of costs to the EA Program, especially where costs have been borne traditionally by the States. Further, ACF should clarify EA regulations or policy guidelines to focus on the original legislative intent of the Program. For example, ACF would need to limit the duration of the EA eligibility period for assistance.

RECOMMENDATIONS

We recommend ACF:

1) support legislation that would cap the Federal share of EA expenditures or include the EA Program as part of a block grant,

2) revise or rescind its current policies allowing the shifting of costs to EA, especially where such costs have been borne traditionally by the States. In this regard, ACF should limit the EA eligibility period for assistance, and

3) issue policy guidelines requiring States to reimburse hospital care at amounts less than total charges.

ACF RESPONSE AND ADDITIONAL OIG COMMENTS

In response to our draft report, ACF agreed that there is an urgent need to control the rapid escalation of EA expenditures. Further, ACF agreed with our recommendation to continue its effort and support of capping EA expenditures. The ACF stated it fully intends to take action to address inappropriate State practices. As such, on

September 12, 1995, ACF issued Action Transmittal ACF-AT-95-9 which discontinues FFP under the EA Program for costs of providing benefits and services to children involved in the juvenile justice system. As a result of this action, estimated annual savings of over $240 million can be realized from three of the States we reviewed. Finally, in light of ACF's action and the passage of welfare reform bills by Congress, we believe ACF should alert Congress to these significant savings for their consideration in establishing spending levels for either a cap or a block grant.

The ACF, however, disagreed with several aspects of our draft report. Specifically, ACF (1) did not believe the report realistically conveyed the current legislative environment, the difficulty of successfully achieving our recommended options, nor the past actions that ACF has taken to address the EA issues, and (2) objected to the inference that ACF's administration of the EA program violates congressional intent. We have reported in the background section of the report ACF's earlier attempts to address EA issues and have updated our report to reflect congressional actions since the issue of our draft report. As stated in our report, the EA legislation indicates, as confirmed by the Committee reports, that the EA program was designed to deal with crisis situations threatening a family and to provide temporary financial assistance and supportive services. We continue to believe that the types of services described in the report exceed what the Congress intended to cover under the EA program.

Another concern expressed by ACF pertains to our second recommendation. Our recommendation is aimed at curbing the shifting of costs traditionally borne by the States. By limiting the eligibility period, the amount of costs which could be shifted would be significantly limited. The ACF stated that Section 8005 of the Omnibus Budget Reconciliation Act of 1989 still prohibits the Department from implementing the December 1987 proposed regulation. However, we believe Public Law 101-508, Section 5058 extended the moratorium on new regulations addressing EA issues only to October 1, 1991. This was the last extension of the moratorium passed by the Congress. Therefore, while it could be argued that ACF may not implement the 1987 Notice of Proposed Rulemaking, ACF currently has the authority to issue new regulations to limit EA to a period not to exceed 30 consecutive days in any 12 consecutive months.

In addition, ACF stated that the report failed to recognize that its policy was guided in part by past court decisions. The ACF cited Quern vs Manley, 436 U.S. 725 (1978) as granting States wide latitude to define emergencies and services. While States are granted flexibility, their EA program must still be consistent with congressional intent. Our review has shown that congressional intent has not always been met.

The ACF did not agree with our recommendation to revise or rescind its policies that allow States to claim foster care costs for children who do not meet the requirements for Title IV-E and child welfare costs which are in excess of the Titles IV-B and XX caps. We continue to believe that ACF's current policy interpretation allows States to claim costs which the Congress, by limiting the Federal share of Titles IV-B, and XX, has determined to be the States' responsibility. As we stated on page 9 of the report, foster care placements are designed by their nature to provide a home for the child until such

time as permanent placement is found, which potentially could be a long-term process. However, the legislative intent of EA is to provide short-term assistance not otherwise met. Further, as stated on page 10, it seems unreasonable that States should be able to claim the costs in excess of the cap established by Congress to define the limit of Federal funding by shifting them to the EA Program.

Finally, ACF requested some guidance with respect to its authority to issue guidelines to limit the payment amounts for hospital care. The Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments, states that for costs to be allowable under a grant program, costs must meet certain criteria. One of the criteria is that costs be necessary and reasonable for proper and efficient performance and administration of Federal awards. Circular A-87 specifies that a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. Further, Circular A-87 states that in determining the reasonableness of a given cost, some consideration shall be given to factors such as (a) the restraints or requirements imposed by such factors as arms length bargaining or Federal, State, and other laws and regulations, and (b) market prices for comparable goods or services. In applying this criteria to hospital care costs under the EA Program, other Federal health programs, specifically Medicare and Medicaid, limit reimbursement to a reasonable amount less than total charges. Therefore, ACF's authority to limit hospital reimbursement to an amount less than total charges may be drawn from this reasonableness criteria in Circular A-87.

EXHIBIT I

EA EXPENDITURES
STATES REVIEWED ON-SITE AND VIA QUESTIONNAIRE
FISCAL YEARS 1991 THROUGH 1994

STATE	FY 91	FY 92	FY 93	FY 94	TOTAL FY 91-94	INCREASE FY 91 TO FY 94	% INCREASE FY 91 TO FY 94
Reviewed On-Site:							
New York	49,861,696	222,088,692	271,403,071	418,855,228	962,208,687	368,993,532	
California	82,152	23,405	(107)	146,017,327	146,122,777	145,935,175	
Massachusetts	23,372,261	18,925,135	22,837,774	24,262,121	89,397,291	889,860	
Colorado	0	1,301,045	12,193	12,899,429	14,212,667	12,899,429	
Connecticut	0	0	0	9,537,961	9,537,961	9,537,961	
Kansas	266,972	257,026	318,363	6,061,219	6,903,580	5,794,247	
Total	73,583,081	242,595,303	294,571,294	617,633,285	1,228,382,963	544,050,204	
Reviewed Via Questionnaire:							
Indiana	0	0	0	30,057,519	30,057,519	30,057,519	
Illinois	3,016,817	2,399,556	2,075,783	11,689,152	19,181,308	8,672,335	
Pennsylvania	3,006,431	1,317,967	2,578,272	2,874,690	9,777,360	(131,741)	
Arizona	154,352	596,375	1,837,413	6,770,648	9,358,788	6,616,296	
Missouri	0	379,164	1,208,971	7,542,414	9,130,549	7,542,414	
Total	6,177,600	4,693,062	7,700,439	58,934,423	77,505,524	52,756,823	
All Other States	73,363,885	66,011,354	92,460,287	105,063,349	336,898,875	31,699,464	
Total All States	153,124,566	313,299,719	394,732,020	781,631,057	1,642,787,362	628,506,491	410%

EA expenditures reviewed on-site and via questionnaire as a percent of total EA expenditures = 79 %

EXHIBIT II

PROJECTED EA EXPENDITURES
STATES REVIEWED ON-SITE AND VIA QUESTIONNAIRE
FISCAL YEARS 1995 AND 1996

STATE	FY 95	FY 96	TOTAL FY 95 AND FY 96
Reviewed On-Site:			
New York	352,313,000	350,872,000	703,185,000
California	137,835,000	145,507,000	283,342,000
Massachusetts	32,025,000	48,025,000	80,050,000
Colorado	13,521,000	14,197,000	27,718,000
Connecticut	46,000,000	46,000,000	92,000,000
Kansas	1,265,000	1,326,000	2,591,000
Total	582,959,000	605,927,000	1,188,886,000
Reviewed Via Questionnaire:			
Indiana	25,550,000	26,825,000	52,375,000
Illinois	22,550,000	22,550,000	45,100,000
Pennsylvania	165,049,000	165,381,000	330,430,000
Arizona	7,084,000	7,483,000	14,567,000
Missouri	11,500,000	12,000,000	23,500,000
Total	231,733,000	234,239,000	465,972,000
All Other States	165,352,000	173,353,000	338,705,000
Total All States	980,044,000	1,013,519,000	1,993,563,000

The projections listed above were reported by the States to ACF in FY 1994. The projections listed in the report in the three tables are updated projections provided to us by the States during the course of our review and, therefore, will not agree with the figures in this exhibit.

EXHIBIT III

COMPARISON OF COSTS FOR JUVENILE JUSTICE, FOSTER CARE, AND CHILD WELFARE TO TOTAL EA EXPENDITURES PROJECTED FOR ALL STATES FISCAL YEARS 1995 AND 1996

State Reviewed	FY 1995 Projections (in millions)	FY 1996 Projections (in millions)	Total (in millions)	Percent of Total Projections
Juvenile Justice				
California	$121	$121	$242	
Pennsylvania	45	45	90	
New York	73	75	148	
Total	$239	$241	$480	24%
Foster Care				
Pennsylvania	$35	$35	$70	
New York	57	50	107	
Arizona	10	10	20	
Connecticut	16	22	38	
Total	$118	$117	$235	12%
Child Welfare				
California	$22	$26	$48	
Pennsylvania	100	100	200	
New York	100	100	200	
Illinois	23	28	51	
Total	$245	$254	$499	25%
All Services				
Total All States	$980	$1,014	$1,994	100%

INCREASE IN ELIGIBILITY PERIODS FOR EA
FISCAL YEARS 1991 THROUGH 1994

STATES REVIEWED	1991	1992	1993	1994
ARIZONA				
TEMPORARY HOUSING AND UTILITIES	3 months	3 months	3 months	3 months
FOSTER CARE, SHELTER CARE, AND CHILD CARE	no program	no program	no program	12 months
CALIFORNIA	no program	no program	6 months	12 months
COLORADO	no program	6 months	6 months	12 months
CONNECTICUT				
CHILD PROTECTIVE SERVICE	no program	no program	6 months	12 months
HOSPITAL CARE (SEE NOTE 1)	no program	no program	12 months	12 months
CASH ASSISTANCE (SEE NOTE 2)	no program	no program	6 months	9 months
VICTIMS OF DOMESTIC VIOLENCE	no program	no program	6 months	12 months
ILLINOIS				
FOOD, CLOTHING, RENT	1 month	1 month	1 month	1 month
SHELTER	no program	no program	6 months	6 months
DCFS FAMILY/CHILD SERVICES	no program	no program	no program	12 months
INDIANA	no program	no program	6 months	6 months
KANSAS	3 months	3 months	6 months	6 months
MASSACHUSETTS	3 months	3 months	6 months	12 months
MISSOURI	no program	6 months	6 months	12 months
NEW YORK	6 months	no limit	no limit	no limit
PENNSYLVANIA				
SHELTER	1 month	1 month	1 month	1 month
PROTECTIVE SERVICES/CHILDREN	no program	no program	no program	no limit

Notes:

(1) Hospital care coverage is limited to the specific conditions/illness being treated during the 30-day authorization period.

(2) The State plan amendment providing cash assistance for 9 months is pending approval by ACF.

DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
Office of the Assistant Secretary, Suite 600
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

DATE: September 18, 1995

TO: June Gibbs Brown
Inspector General

FROM: Mary Jo Bane
Assistant Secretary
for Children and Families

SUBJECT: Comments on OIG Draft Report: "Review of Rising Costs in the Emergency Assistance Program" (A-01-95-02503)

We reviewed your draft report, "Review of Rising Costs in the Emergency Assistance Program" and have the following comments and suggestions. Also attached are detailed comments, as well as technical corrections and editorial suggestions, on the draft report itself.

Because of my concern about the dramatic expansion of the Emergency Assistance (EA) program, I asked your staff to undertake this study. The findings of the report clearly reinforce our belief that the broad EA statutory authority enables States to maximize Federal revenue by claiming matching for previously State-funded services. The report effectively validates the urgent need to control the resultant skyrocketing costs and also identifies inappropriate State practices, which we fully intend to address.

This Administration, like previous ones, tried to limit this uncontrolled cost growth through legislative or regulatory proposals. As noted in the report, the President proposed legislation to equitably and fairly cap EA expenditures in the Work and Responsibility Act of 1994, but Congress failed to act on this comprehensive welfare reform legislation. Thus, we are in total agreement with the overall findings and general recommendation that ACF continue its effort and support of capping EA expenditures.

I am also very concerned about several aspects of the draft report.

First, the report does not realistically convey the current legislative environment, the difficulty of successfully achieving your recommended options, nor the past actions that ACF has taken to address the EA issues. To improve the report, we recommend that you fully discuss the pending House and Senate welfare reform bills -- both of which would eliminate the existing statutory language on the EA program and replace EA, AFDC, and other related programs with a block grant.

The draft report includes some mention of the efforts undertaken by ACF over the years to reform the EA program, but fails to adequately portray Congressional reaction to such efforts. Also, the report ends this discussion with the Work and Responsibility Act of 1994, and implies that nothing further has occurred. In fact, the House-passed welfare reform bill, H.R. 4, would replace EA (and AFDC, among other programs) with a block grant, as would the Senate Republican Leadership plan, S. 1120. While it is too early to say whether welfare reform legislation will pass, Congress has been fairly clear about its plans for the EA program. The report should include a discussion about these legislative developments; they have a direct bearing on the draft recommendations and the need for and appropriate timing of further ACF legislative proposals.

Second, given the variety of attempts ACF has made to address the issues raised in the report, we are very disturbed by the inference, throughout the report, that ACF's administration of the EA program violates Congressional intent. Generally, the Department has authority to implement a statute based on a reasonable interpretation of statutory intent. This is particularly true if a statute is silent or ambiguous with respect to the issues presented. Several of the valid matching issues raised in the report did not exist at the time the EA statute was passed in 1967. Therefore, it is impossible to read the examples cited in the House and Senate Committee reports at that time to conclusively determine Congressional intent.

We do not believe that our interpretation, which has permitted States to claim a variety of costs, is compelled by the statute, or is the only permissible interpretation of Congressional intent. However, we do insist that the regulations comply with the statute and that our actions to implement them have been based on a reasonable, legally supportable interpretation of the statute and Congressional intent. Through two reconciliation statutes which placed a moratorium on the 1987 Notice of Proposed Rulemaking (NPRM) and subsequent failure to act on two pieces of proposed legislation, Congress arguably indicated that it found the current regulations and our actions valid.

The report fails to recognize that ACF's current policy has also been guided by past decisions of the courts. In relation to the Emergency Assistance program, the United States Supreme Court has granted States wide latitude to define emergencies and services. See e.g., Quern v. Mandley, 436 U.S. 725 (1978). Accordingly, under longstanding Federal policy, a State is permitted to specify the types of emergencies, services, and eligibility criteria it will cover, so long as the program's scope is defined with equity and reasonableness and bears a valid relationship to the intent and purpose of the program.

Third, we would like you to clarify the second recommendation. It appears to recommend two entirely different things -- one to prohibit the shifting of costs; the second to shorten the length of the eligibility period. The second could be an issue, with or without a tie-in to State cost-shifting.

Limiting the length of the eligibility period is theoretically possible -- as ACF's past actions proved. Given the programmatic history of this issue, ACF could make such a change only through the regulatory process, allowing for full public comment, or through the legislative process. We note that Section 8005 of the Omnibus Budget Reconciliation Act of 1989 still prohibits the Department from implementing the December 1987 NPRM. Congress did not favor the proposed rule's restriction of States' provision of EA to meet needs only for 30 days. Because a regulation limiting the eligibility period would surely be challenged again, it is questionable whether such an approach would succeed. Beyond that, ACF's policy options seem extremely limited.

In recommending these policy changes, the report should acknowledge that: a) pending legislation capping expenditures would provide a cleaner and more definitive solution to the rise in EA costs than could be achieved through regulatory or policy issuances; and b) in that light, it makes sense for ACF to generally defer action until the status of pending legislation is resolved.

While we agree that rising costs need to be controlled through capping, we definitely do not agree with your recommendation to revise or rescind our policies that allow States to claim: a) foster care costs for children who do not meet the requirements for Title IV-E; and, b) child welfare costs which are in excess of Titles IV-B and XX caps. These approved plan amendments and claims are consistent with the flexibility allowed to the States under the EA rules.

The provision of these benefits and services -- emergency foster care, family preservation and support services, medical assistance, and counseling -- to meet emergency situations resulting from child abuse and neglect are necessary to prevent the destitution of children.

But the findings and implications of your report, with respect to the costs claimed for providing facilities and services to children involved in the juvenile justice system, highlighted our growing reservations. Because of the report, we have re-evaluated our juvenile justice policies and believe that such costs should not be allowed in the future under the Emergency Assistance program.

Fourth, we would like additional clarification of your recommendation: "issue policy guidelines requiring States to reimburse hospital care at amounts less than total charges." Specifically, we would like your thoughts regarding the authority for ACF to issue guidelines similar to those covering the Medicaid and Medicare programs.

Finally, let me express our thanks to you and your staff for undertaking this study on our behest. As we expected, the findings dramatically demonstrate the need for Congress to enact legislation which will curb the uncontrolled growth of costs in the Emergency Assistance program.

If you or your staff have questions about these comments, please contact Mack Storrs at (202) 401-9289.

Attachments

ATTACHMENT A -- TECHNICAL COMMENTS

The following comments are technical in nature. Generally, in this attachment, we have noted the rationale for suggested changes. In Attachment B, we have actually made suggested word changes in the draft report for your convenience.

GENERAL

We recommend that the report use the word "claims" rather than "expenditures" since that is what the analysis represents. It should also indicate that: 1) claims data is used because final expenditure figures are not available due to some unresolved deferrals; and 2) the expected growth in expenditures may be smaller than the growth in claims because of the substantial deferrals in recent years.

EXECUTIVE SUMMARY

We disagree with the comment: The Administration for Children and Families (ACF) has "enabled States to maximize Federal revenues by obtaining EA funding for services traditionally State-funded." (p.i, para.1) The regulations at 45 CFR 233.120 provide States considerable latitude in specifying the emergency needs to be met and the services provided to address those needs.

We also question the validity of the comment: "These services... usually address long-term problems while EA was intended to address temporary emergencies." (p.i, para.1) Although the problems that bring families to the child welfare agencies may be long-term, the need for emergency foster care and child welfare services address the needs of the immediate crisis situation for shelter, care and counseling. EA benefits and services, such as support services, counseling, and alternative living arrangement are directed to avoid destitution of these children, prevent further deterioration of the existing problem situation, or resolve the crisis.

FINDINGS & RECOMMENDATIONS

INCREASED EA EXPENDITURES

We recommend deletion of the statement: "...ACF approved State plan amendments which enabled States to maximize Federal revenues by obtaining EA funding for services traditionally state funded." (p.5, para.1) The last statement in the same paragraph correctly reflects the reasons for the EA program expansions, i.e., the EA rules as the basis for such expansions.

WHAT ARE STATES USING THE EA PROGRAM FOR TODAY

FOSTER CARE

We do not agree with the comment: "If a child is not eligible for title IV-E, the proper care of the child should revert to the State as intended by the title IV-E legislation." (p. 9) The EA statute provides for alternative living arrangements to avoid destitution of children without resources. If a child is not eligible for the title IV-E program and does not have resources, it would be appropriate to assist such children under the EA program. Doing so would meet the intent of the EA program.

CHILD WELFARE

We disagree that services (child care, day care, counseling, referrals, etc.), which may also be funded under title IV-B and title XX, should not be funded under the EA program. (p. 10, para. 1) Such services are permissible under the flexibility allowed under the EA rules. Whereas similar services under titles IV-B and XX may be to meet ongoing needs of the families, EA services are to meet emergency needs of the families with children. The OIG study did not specifically review individual cases to reach its conclusion that there is inappropriate cost shifting.

Further, where multiple Federal programs may provide funds for similar types of assistance, this does not preclude serving different populations with the same types of services. For example, title XX funds may be exclusively used to serve families with no children or the elderly population. This would allow States to expand assistance to a larger population of needy families.