Memorandum

Date · FEB 29 2000

From June Gibbs Brown
Inspector General

Subject Review of Retroactive Adjustments Filed by Massachusetts Under the Title IV-E Foster Care Program (A-01-98-02505)

To Olivia A. Golden
Assistant Secretary
for Children and Families

This is to alert you to the issuance of our final report on February 29, 2000. A copy is attached. The objective of our review was to determine whether retroactive adjustments filed under the Title IV-E Foster Care Program (IV-E) were adequately supported and comply with Federal eligibility requirements. Our review was conducted at the Department of Social Services (DSS) in Boston, Massachusetts.

We estimated that case files for 17,229 retroactive adjustments did not support all of the IV-E eligibility requirements for Federal Fiscal Year (FFY) 1994 to FFY 1997. We found that DSS did not have adequate controls in place for ensuring that procedures were followed for obtaining judicial determinations contrary to the welfare (CTW) and reasonable efforts (RE) determinations, and maintaining and locating case files and pertinent court documents. Federal cost principles state that allowable costs must be adequately documented, and IV-E eligibility requirements require written judicial CTW and RE determinations for Federal reimbursement of IV-E costs.

Our reconciliation of supporting documents to Form IV-E-12 identified $3.7 million ($1.85 million FFP) in over claimed costs. The DSS had refunded all but $332,482 ($166,241 FFP) of the over claimed costs. Federal regulations require States to expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Accordingly, we used the Massachusetts Internal Control Guide as the basis for identifying the internal controls that should be in place to prevent or detect overpayments. The control weaknesses we identified centered on the accuracy and reliability of accounting data. The Public Consulting Group's Revenue Management Services Quality Plan for Fiscal Year (FY) 2000, however, does include general control objectives for IV-E claim preparation and submission.

Based on our statistical sample, we have projected overpayments with a lower limit of $21,784,977 ($10,892,488 FFP), in nonvoluntary positive adjustments that did not support all of the IV-E eligibility requirements for Federal reimbursement. (See Appendix B for details on our statistical sample methodology).

We are referring the projected overpayments for costs claimed for ineligible nonvoluntary positive adjustments to the Administration for Children and Families (ACF) for their review and determination of an appropriate resolution.

We recommend that DSS: (1) repay the $332,482 ($166,241 FFP) in identified reconciliation errors; (2) improve its controls for obtaining completed, signed, and dated Form 29C (court certification for the purpose of documenting CTW and RE determinations), and maintaining it in the appropriate consumer case file; and (3) resolve all of the identified internal control weaknesses in prior claiming systems and implement the FY 2000 controls for claim preparation and submission procedures.

State Agency and OIG Comments

The State agency disagreed with a number of our conclusions (See Appendix E). The DSS stated that obtaining written judicial CTW and RE determinations are not warranted due to a Massachusetts statutory amendment in 1992 that states "...in the absence of written determination to the contrary, it shall be presumed that the court did find said reasonable efforts did occur." Further, DSS believes that child in need of services (CHINS) are tantamount to a voluntary placement agreement and under Federal law only needs a CTW determination to be eligible for Federal reimbursement. As discussed in the report, we believe Section 29C of the MGL, as amended, does not meet Federal IV-E requirements. Regarding the latter issue, we feel that CHINS cases are not tantamount to a voluntary placement agreement because a parent needs court intervention to revoke/withdraw a CHINS, whereas a parent has discretion to revoke a voluntary placement agreement. Accordingly, we continue to hold the position that costs claimed for Federal reimbursement need both written CTW and RE determinations regardless of Statute 29C. The ACF agrees with our position on Statute 29C and CHINS.

Although DSS disagrees with our finding, they have been proactive in attempting to increase the claims and adjustments supported by written determinations. Specifically, we found that documented judicial RE and CTW determinations increased from 66 percent in FFY 1994 to 78 percent in FFY 1997. On March 31, 1999, the Massachusetts legislature amended Section 29C to comply with the Adoption and Safe Families Act of 1997. This will require written CTW and RE determinations on an annual basis. We believe that this action by DSS will help curtail the problems cited in this report.

The State agency agreed with our finding on reconciliation errors and fully adjusted the $3.7 million ($1.85 million FFP) in identified reconciliation errors. The State also agreed to integrate controls for processing IV-E claims into written operating procedures.

Any questions or comments on any aspect of this memorandum are welcome. Please call me or have your staff contact John A. Ferris, Assistant Inspector General for Administrations of Children, Family, and Aging Audits, at (202) 619-1175, if you have any questions.

Attachment - as stated

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF RETROACTIVE ADJUSTMENTS FILED BY MASSACHUSETTS UNDER THE TITLE IV-E FOSTER CARE PROGRAM

JUNE GIBBS BROWN
Inspector General

February 2000
A-01-98-02505

DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

Office of Audit Services
Region I
John F. Kennedy Federal Building
Boston, MA 02203
(617) 565-2684

CIN: A-01-98-02505

Mr. Jeffrey A. Locke
Interim Commissioner
Department of Social Services
24 Farnsworth Street
Boston. Ma 02210

Dear Mr. Locke:

Enclosed are two copies of the U.S. Department of Health and Human Services, Office of Inspector General (OIG), Office of Audit Services report entitled "Review of Retroactive Adjustments Filed by Massachusetts under the Title IV-E Foster Care Program" for Federal Fiscal Years 1994 through 1997.

Final determination as to the actions taken on all matters reported will be made by the HHS action official named below. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (Public Law 90-23), OIG reports issued to the Department's grantees and contractors are made available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act which the Department chooses to exercise. (See 45 CFR Part 5.)

To facilitate identification. please refer to Common Identification Number A-01-98-02505 in all correspondence relating to this report.

Sincerely yours,

William J. Hornby

William J. Hornby
Regional Inspector General
for Audit Services

Enclosures as stated

Direct Reply to HHS Action Official:

Hugh Galligan
Regional Administrator
Administration for Children and Families
U.S. Department of Health and Human Services
Region I

EXECUTIVE SUMMARY

BACKGROUND

The Foster Care program was authorized in 1980 under title IV-E of the Social Security Act, Section 470 (42 U.S.C. 670). Its purpose is to help States provide proper care for children who need placement outside their homes, in a foster family home or an institution. The Children's Bureau, under the Administration for Children and Families (ACF), works with State and local agencies to develop and improve the Foster Care program. The Department of Social Services (DSS) is responsible for administering the IV-E program for Massachusetts.

The ACF's instructions for submitting IV-E costs for Federal reimbursement require States to complete Form IV-E-12 (State Quarterly Report of Expenditures and Estimates) for both current expenditures and prior adjustments. According to 45 CFR, Part 95, Section 7, the Federal Government will pay a State for prior quarter adjustments only if the State files a claim within 2 years after the calendar quarter in which the State agency made the expenditure. For our audit period, October 1, 1993 through September 30, 1997, DSS claimed about $84 million in adjustments for nonvoluntary IV-E costs.

Andersen Consulting, with the Public Consulting Group (PCG) as the subcontractor, engaged in a contingency fee type contract with DSS to provide revenue management services (effective July 1993 to September 1996). The fee arrangement was based on incremental percentages of progressive revenue thresholds and substantial penalties could be levied for not meeting revenue goals. In October 1996, PCG became the primary contractor. Its fees were a percentage of collections with a ceiling and substantial penalties could be levied for unmet revenue goals.

In June 1995, Region I ACF staff performed a pilot review in Massachusetts to test ACF's new monitoring strategy of State IV-E agencies. The ACF's "Final Report for the Massachusetts IV-E Pilot Review," dated May 10, 1996, disclosed that 42 percent of the cases and 46 percent of the dollars reviewed were ineligible in Calendar Year 1994. This was primarily due to the lack of documented evidence that the judges made a determination that it was "contrary to the welfare" (CTW) of the child to remain at home and that "reasonable efforts" (RE) have been made to prevent the placement of the child with the State. Further, our analysis of caseloads and amounts claimed for reimbursement for Federal Fiscal Year (FFY) 1994 through FFY 1997 noted inconsistencies between and among these variables. In 1 year, for example, nonvoluntary maintenance payments increased by 47 percent while the caseload decreased by 25 percent.

Because of the nature of the contracts, ineligibility rates identified by ACF, and our analysis of caseloads and claimed costs, we initiated a review of retroactive claims developed by DSS contractors for FFY 1994 through FFY 1997.

OBJECTIVE

The objective of our review was to determine whether nonvoluntary positive adjustments filed under Title IV-E were adequately supported and comply with Federal eligibility requirements.

SUMMARY OF FINDINGS

We estimated that case files for 17,229 nonvoluntary positive adjustments did not support all of the IV-E eligibility requirements for FFY 1994 to FFY 1997. We found that DSS did not have adequate controls in place for ensuring that procedures are followed for obtaining judicial CTW and RE determinations, and maintaining and locating case files and pertinent court documents. Federal cost principles state that allowable costs must be adequately documented, and IV-E eligibility requirements require judicial CTW and RE determinations for Federal reimbursement of IV-E costs. The DSS holds the position that obtaining written judicial CTW and RE determinations are not required due to a Massachusetts statutory amendment in 1992 that states "...in the absence of a written determination to the contrary, it shall be presumed that the court did find that said reasonable efforts did occur." Further, DSS contends that child in need of services (CHINS) are tantamount to a voluntary placement agreement and only needs a CTW determination to be eligible for Federal reimbursement. We believe that written documentation of judicial CTW and RE determinations are needed in both situations. The ACF has concurred with our findings.

Based on our statistical sample, we have projected overpayments that range from a lower limit of $21,784,977 ($10,892,488 FFP). (See Appendix B for details on our statistical sample methodology). We are referring our projected overpayments to ACF for their review and the determination of an appropriate resolution.

Our reconciliation of supporting documents to Form IV-E-12 identified $3.7 million ($1.85 million FFP) in over claimed costs. In March and June 1998, DSS adjusted all but $332,482 ($166,241 FFP) of the over claimed costs. Federal regulations require States to expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Accordingly, we used Massachusetts Internal Control Guide as the basis for identifying the internal controls that should be in place to prevent or detect over claimed amounts. The control weaknesses we identified centered on the accuracy and reliability of accounting data. The PCG's Revenue Management Services Quality Plan for FY 2000, however, does include general control objectives for IV-E claim preparation and submission.

RECOMMENDATIONS

We recommend that DSS:

- repay the $332,482 ($166,241 FFP) in identified reconciliation errors;
- improve controls to ensure that DSS staff consistently obtain written CTW and RE judicial determinations; and
- ensure that identified internal control weakness in prior claiming systems have been resolved and recently implemented controls are included in claim preparation and submission procedures.

State Agency and OIG Comments

The State agency disagrees with a number of our conclusions (See Appendix E). Specifically, it disagrees with our conclusions regarding CTW and RE determinations, CHINS, and related controls.

- The DSS stated that obtaining written judicial CTW and RE determinations are not necessary due to a statutory amendment in 1992 that states "...in the absence of written determinations to the contrary, it shall be presumed that the court did find said reasonable efforts did occur." The DSS added that it used PIQ-86 as the basis for their 1992 amendment, which they believe complies with Federal law. As discussed in the report, we believe Section 29C of the MGL, as amended, does not meet Federal IV-E requirements. Our position is supported by ACF.

- The DSS believes that CHINS cases that are initiated by a parent should be treated in the same manner as court actions that follow a parent's request for voluntary placement. Accordingly, DSS feels these cases should be eligible because they meet the eligibility standard of a voluntary case. We found that CHINS cases can only be withdrawn after the parent petitions the judge for dismissal whereas a voluntary placement agreement can be withdrawn by the parent at any time during the first 180 days. Because the judge may or may not allow the withdrawal, we believe that a CHINS case is similar to a nonvoluntary case. Our position is supported by ACF.

- Although DSS disagrees with our finding, they have been proactive in attempting to increase the claims supported by written determinations. Specifically, we found that documented judicial RE and CTW determinations increased from 66 percent in FFY 1994 to 78 percent in FFY 1997. On March 31, 1999, the Massachusetts legislature amended Section 29C to comply with the Adoption and Safe Families Act of 1997. This will require written CTW and RE determinations on an annual basis. We believe that this action by DSS will help curtail the problems cited in this report.

In regards to identified reconciliation errors, the State agency concurred with our finding and made an adjustment for the remaining $332,482 ($166,241 FFP). The State also agreed to integrate controls for processing IV-E claims into written operating procedures. Finally, we considered all of DSS's comments provided in its response to the draft report and made revisions where appropriate.

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INTRODUCTION

BACKGROUND

The Foster Care program was authorized in 1980 under title IV-E of the Social Security Act, Section 470 et seq. (42 U.S.C. 670 et seq.). Its purpose is to help States provide proper care for children who need placement outside their homes, in a foster family home or an institution. The program provides funds to States to assist them with the costs of foster care maintenance for eligible children, administrative costs to manage the program, and training for staff, foster parents, and staff of child care institutions providing foster care services. The Children's Bureau, under the Administration for Children and Families (ACF), works with State and local agencies to develop and improve Foster Care and other programs to assist America's children and their families. The Department of Social Services (DSS) is responsible for administering the IV-E programs for Massachusetts. The DSS out sources its revenue function, including the process of submitting retroactive adjustments for Federal reimbursement.

The ACF's instructions for submitting IV-E costs for Federal reimbursement requires States to complete the State Quarterly Report of Expenditures and Estimates (Form IV-E-12). Both current expenditures and prior adjustments are claimed on Form IV-E-12. According to 45 CFR, Section 95.7, the Federal Government will pay a State for prior quarter adjustments only if the State files a claim within 2 years after the calendar quarter in which the State agency made the expenditure. For our audit period, October 1, 1993 through September 30, 1997, DSS claimed about $84 million ($42 million Federal financial participation - FFP) in positive retroactive adjustments for nonvoluntary foster care expenditures. (See Appendix A for Procedures for Claiming IV-E Costs for Federal Reimbursement).

Andersen Consulting, with the Public Consulting Group (PCG) as the subcontractor, engaged in a contingency fee type contract to provide revenue management and maximization services to DSS for the period July 1993 through September 1996. Andersen Consulting assisted DSS in claiming revenues from Federal grants for various social services programs. The contingency arrangement outlined in the contract between DSS and Andersen Consulting was based on incremental percentages of progressive revenue thresholds. The contract also included substantial penalties for not meeting established revenue collection goals. For the period October 1, 1996 through June 30, 1998, PCG became the primary contractor for providing revenue management and maximization services to DSS. Consultant fees paid to PCG were also based on a percentage of revenue collected except total amounts paid were capped at pre-established amounts. The contract between DSS and PCG also contains substantial penalties for not meeting established revenue goals.

In June 1995, the Region I ACF staff performed a pilot review in Massachusetts to test ACF's new monitoring strategy of State IV-E agencies. Specifically, the review tested the effectiveness and efficiency of this new approach for identifying strengths and weaknesses in the State's Foster Care program and providing appropriate and timely technical assistance to improve any problem areas identified during the review. The ACF's "Final Report for the Massachusetts IV-E Pilot

Review," dated May 10, 1996, disclosed that 42 percent of the cases and 46 percent of the dollars reviewed were ineligible in Calendar Year 1994. This was primarily due to the lack of documented evidence that the judges made a determination that it was "contrary to the welfare" (CTW) of the child to remain at home and that "reasonable efforts" (RE) had been made to prevent the placement of the child with the State. According to a DSS official, the State amended its law in 1992 to alleviate the administrative burden of documenting CTW and RE determinations. The amended law states that judges must make these determinations and that it could be presumed that such a determination was made even absent a written document. Further, DSS policies require its staff to obtain a completed and signed Form 29C (Court Certification Pursuant To G.L.C. 119, S. 29C) for the purpose of documenting CTW and RE determinations (See Appendix A).

An analysis of caseloads and amounts claimed for reimbursement for Federal Fiscal Year (FFY) 1994 through FFY 1997 noted inconsistencies between and among these variables. In 1 year, for example, nonvoluntary maintenance claims increased by 47 percent while the caseload decreased by 25 percent. Further, the cost per case for nonvoluntary maintenance claims increased by 95 percent from FFY 1995 to FFY 1996. In FFY 1995, the decrease in caseload was about 170 percent of the decrease in the amount of the nonvoluntary maintenance claims.

Because contractor fees and penalties are based on costs reimbursed by the Federal Government, ineligibility rates identified by ACF, the amended law for CTW and RE determinations, and our analysis of caseloads and claimed costs, we initiated a review of nonvoluntary positive adjustments developed by DSS contractors for FFY 1994 through FFY 1997.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of our review was to determine whether nonvoluntary positive adjustments filed under Title IV-E were adequately supported and comply with Federal eligibility requirements.

Scope

Our review was conducted in accordance with generally accepted government auditing standards. Our review of the internal control structure was limited to the process for claiming IV-E costs for Federal reimbursement. To achieve our objective, we reconciled supporting documentation to retroactive adjustments claimed in Form IV-E-12 from FFY 1994 through FFY 1997.

Total costs claimed by the State for the 4 years we reviewed totaled $613 million ($308 million FFP). The FFP rate for maintenance payments and most administrative costs is 50 percent. Some training and computer costs are reimbursed at higher FFP rates. Of this total, $117 million ($58 million FFP) represents total net prior quarter adjustments (voluntary, nonvoluntary, and adoption) submitted by DSS for Federal reimbursement. Our review was limited to

nonvoluntary positive adjustments for foster care consumers, which totaled about $93 million (79 percent of total net prior quarter adjustments) from FFY 1994 through FFY 1997. This amount included $5.7 million in duplicate payments claimed and reimbursed for the 5 quarters ending December 31, 1994, and another $3.7 million in miscalculations from FFY 1994 through FFY 1997. The DSS identified the $5.7 million and submitted an adjustment to ACF on August 18, 1995. Accordingly, we adjusted our population down to about $84 million ($42 million FFP) in nonvoluntary positive adjustments. The DSS later submitted adjustments for all but $332,482 of the $3.7 million in the March and June 1998 IV-E-12. As a result, we eliminated each line item that made up the $5.7 million from supporting detailed documents, and adjusted line item amounts, as appropriate, for the $3.7 million in over claimed costs.

We performed our field work at the DSS in Boston, Massachusetts between July 1998 and June 1999. We discussed the results of our review with DSS and PCG officials on July 8, 1999. We also received written comments on our draft report from DSS on September 20, 1999 (See Appendix E).

Methodology

To accomplish our audit objective, we:

- selected a statistically random sample of 200 adjustments (50 for each strata/FFY) from 63,611 nonvoluntary positive adjustments from FFY 1994 to FFY 1997;
- reviewed applicable laws and regulations for Title IV-E eligibility and Federal reimbursement of IV-E costs relating to court ordered foster care;
- interviewed a total of five judges, two magistrates and two probation officers from three judgmentally selected court districts to discuss child in need of services (CHINS) proceedings;
- reviewed DSS case files for each sampled adjustment for necessary court documents including court petitions, court orders, and certifications (Form 29C) documenting CTW and RE determinations;
- performed reconciliations of DSS quarterly foster care maintenance costs claimed for the 4 year audit period to supporting State and contractor records;
- reviewed contracts with private consulting firms administering DSS's revenue function;
- performed a systems walk through for the quarter ending December 31, 1997; and

- applied attribute and variable sample appraisal methodologies to project the number and amount of IV-E adjustments that were ineligible for Federal reimbursement.

For each sampled adjustment, we reviewed DSS case files to verify IV-E eligibility. The clinical files for the sampled adjustments were retrieved from either the appropriate regional/field office or storage facilities by DSS. For those adjustments where the necessary documentation was missing from the clinical files, DSS located legal files for us to review. Clinical and legal file information was used to determine if nonvoluntary adjustments for Federal reimbursement met the following eligibility requirements from section 472(a) of the Social Security Act.

(1) The removal of a child from the home was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and that reasonable efforts of the type described in Section 471(a)(15) have been made.

(2) Such child's placement and care are the responsibility of (A) the State agency administering the State plan approved under Section 471, or (B) any other public agency with whom the State agency administering or supervising the administration of the State plan approved under Section 471 has made an agreement which is still in effect.

(3) Such child has been placed in a foster family home or child care institution as a result of a judicial determination.

(4) Such child would have received AFDC under the approved State plan in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated.

(5) Such child would have received such AFDC in or for such month if application had been made therefore, or had been living with a relative within 6 months prior to the month, and would have received such aid in or for such month if in such month he had been living with such relative and application therefore had been made.

Section 471 (a) of the Social Security Act states that "In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which — (15) effective October, 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home."

For FFY 1994, we tested all 50 nonvoluntary adjustments for the above criteria and found that all but the first requirement had been met for each sampled item. Accordingly, we focused on only the first requirement for the remaining 150 nonvoluntary adjustments randomly selected for testing.

An essential part of our review was to determine whether supporting records reconciled with total nonvoluntary adjustments included in Form IV-E-12 submitted for Federal reimbursement. Detailed records included paper documents, containing tens of thousands of line items of retroactive foster care payments, for the first 6 quarters ending March 31, 1995. Claimed IV-E costs for the remaining 10 quarters (June 1995 through September 1997) were provided on either computer diskettes or paper documents. We concluded that PCG's Summary Reconciliation Sheets were the most accurate source for substantiating IV-E costs claimed for Federal reimbursement. We came to this conclusion after attempting to reconcile detailed documentation to PCG's Summary Reconciliation Sheets, and the Summary Reconciliation Sheets to Form IV-E-12. Specifically, there were reconciling differences between detailed records and PCG's Summary Reconciliation Sheets for each of the 16 quarters, as well as for the reconciliation of the Summary Sheets to Form IV-E-12. According to PCG officials, the Summary Reconciliation Sheets were the basis for the State's quarterly claims and were prepared by PCG from the detailed documentation. Therefore, the Summary Reconciliation Sheets were more reflective of the actual amounts charged at the time a particular claim was submitted for reimbursement since subsequent adjustments could have been made to the detailed documentation. Accordingly, we used PCG's Summary Reconciliation Sheets as the basis for the reconciliation and any identified overpayments (net of identified underpayments).

The detailed information, adjusted for duplicates and other identified errors, was used as the source for our population. The line items for the paper documents were manually numbered and added to determine the total number of line items with nonvoluntary positive adjustments and the total amount claimed for FFY 1994 through FFY 1997.

FINDINGS AND RECOMMENDATIONS

Our review found that case files for nonvoluntary positive adjustments did not support all of the IV-E eligibility requirements for Federal reimbursement. Accordingly, we estimated that the nonvoluntary overclaimed amount for the lower limit was $21,784,977 ($10,892,488 FFP). (See Appendix B for details on our statistical sample methodology). Also, we identified $3.7 million ($1.85 million FFP) in overclaimed costs by reconciling supporting documents to Form IV-E-12 (State Quarterly Report of Expenditures and Estimates). The period we reviewed was from FFY 1994 to FFY 1997. We have highlighted these issues under the sections Eligibility for IV-E Foster Care and Controls for Claiming IV-E Costs, respectively.

ELIGIBILITY FOR IV-E FOSTER CARE

We estimated that case files for 17,229 nonvoluntary positive adjustments did not support all of the IV-E eligibility requirements for Federal reimbursement from FFY 1994 to FFY 1997. We found that while DSS had procedures in place for maintaining case files and pertinent court documents in addition to documenting judicial CTW and RE determinations, they did not have adequate controls in place to ensure that these policies were consistently followed during the time of our review. Federal cost principles state that allowable costs must be adequately documented, and Federal IV-E eligibility requirements require judicial CTW and RE determinations for Federal reimbursement of IV-E costs. We are referring the nonvoluntary overclaimed amount with a lower limit $21,784,977 ($10,892,488 FFP), to ACF for their determination and resolution. We recommend that DSS improve controls to ensure that DSS staff consistently obtain written CTW and RE judicial determinations.

We reviewed case files for a statistical sample of 200 nonvoluntary adjustments from our population of 63,611 nonvoluntary positive adjustments made by DSS from FFY 1994 through FFY 1997. (See Appendix B) As shown in Figure 1, we found that 136 out of the 200 adjustments were allowable IV-E costs. Specifically, 123 adjustments were supported by a properly prepared Form 29C, case files for 5 adjustments did not include Form 29C but did include a court order or petition with CTW and RE language, and 8 adjustments represented voluntary cases inappropriately classified as nonvoluntary. Voluntary cases do not require CTW and RE determinations, but do require a judicial determination that such placement is in the best interest of the child within 180 days of signing the voluntary agreement.

FFY	Sampled	Allowed	Disallowed	Error Rate	Amount Disallowed	Percent Disallowed
1994	50	33	17	34%	$ 21,571	20%
1995	50	35	15	30%	$ 36,122	34%
1996	50	29	21	42%	$ 37,323	35%
1997	50	39	11	22%	$ 12,147	11%
Total	200	136	64	33%	$107,163	100%

Figure 1 - Summary of Disallowances

Our results also disclosed that case files for 64 out of 200 sampled adjustments did not support all Federal IV-E eligibility requirements. The IV-E costs reimbursed for these adjustments totaled $107,163. A breakout of the 64 adjustments follow:

- 63 adjustments, totaling $107,050, represented instances where court documents either did not support both CTW and RE determinations, or RE determinations; and

- 1 adjustment, totaling $113 represented an instance where, according to the State, the case file was destroyed.

Below is an analysis of each error type we identified. We reviewed all potential exceptions with DSS, and made revisions when new information provided the evidence we needed to confirm that all IV-E eligibility requirements were adequately supported by case files. The net result was 64 exceptions. Also, we consulted with ACF in Region I for those adjustments where it was not clear to us whether the language in the court documents demonstrated that the proper CTW and RE determinations were made by the judge.

CTW and RE Determinations

Our review of court documents for 63 out of 64 adjustments disclosed that the State did not satisfy section 472(a) of the Social Security Act since the CTW and RE determinations were not documented in the court order. Section 472(a)[1] provides that foster care maintenance payments will be available for a child who (prior to July 16, 1996) would have met the AFDC requirements "but for his removal from the home of a relative, and if:"

> (1) the removal from the home occurred pursuant to a voluntary placement agreement [not present in these cases], or was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 471(a)(15) for a child have been made . . . .

Section 471(a)(15) states in subparagraph (B) that, "except as provided in subparagraph (D) [defining certain types of abuse situations], reasonable efforts shall be made to preserve and reunify families —"

> (i) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from the child's home; and

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[1] Note: Changes made in Title IV-E during the course of the audit period are not significant for purposes of the audit findings.

(ii) to make it possible for the child to safely return to the child's home; . . . .

The ACF Policy Interpretation Question (PIQ) 86-02, issued May 8, 1986, interpreted section 472(a)(1) of the Social Security Act narrowly to require that the court order clearly evidence that a "contrary to the welfare" determination has been made. In analyzing the significance of a State law requiring that removal be made only for the "best interest" of the child, the PIQ stated that it must still be shown that the court order was "expressly based on" the State law.

While PIQ 86-02 by its terms speaks only to CTW requirements, DAB decisions have clarified that RE determinations must also be documented in the court order itself or be expressly based upon a State law requiring RE determinations to be made. In Illinois Dept. of Children and Family Services, DAB No. 1564 (1996), the Board found that while Illinois law required that a court must determine that "family preservation and family reunification have been unsuccessful" prior to placing a child in foster care, foster care cases complied with the Federal RE requirement only because, among other matters, "the court used significant or unique language tracking or paralleling the particular statute." (The DAB 1564 at 11 - 12) Similarly, in Pennsylvania Dept. of Public Welfare, DAB No. 1508 (1995), the Board found inadequate the State's reliance upon a State law which Pennsylvania argued required RE determinations, since the evidence was insufficient to show that the court orders at issue relied upon the State law. DAB No. 1508 at 33.

The ACF's Massachusetts IV-E Pilot Review Report (issued May 10, 1996) further emphasized this point in its recommendation to DSS that: "(c)ourts must make a written determination regarding the contrary to the welfare and reasonable efforts." We found that DSS did not have adequate controls in place to ensure that procedures for documenting judicial CTW and RE determinations were consistently followed. Evidence of an appropriate judicial determination for each IV-E retroactive adjustment might include a court document that includes language paralleling or tracking Federal requirements or a completed and signed Form 29C.

Our review disclosed that DSS staff did not consistently follow the then current procedures for obtaining a Form 29C for 64 of the 200 adjustments. Specifically, case files for 63 of the 64 adjustments did not include a completed, dated and signed Form 29C and the court order did not include language to satisfy both CTW and RE determinations. An analysis of the 63 adjustments disclosed that case files for (See Appendix C):

- 30 adjustments, totaling $25,778 ($12,889 FFP) did not include court documents with both CTW and RE determinations; and

- 33 adjustments, totaling $81,272 ($40,636 FFP) did not include court documents with RE determinations but did include a CTW determination.

Although DSS has increased its efforts following the ACF Pilot Review to have 29C forms completed in all cases, the agency takes the position that lack of a 29C form does not preclude

eligibility for the cases under review given Massachusetts General Law (MGL) as it existed during the audit period. Central to its argument is MGL, Chapter 119, Section 29C (amended in 1992) which reads as follows:

> "Whenever a court of competent jurisdiction commits, grants custody or transfers responsibility of a child to the department or its agent, the court shall certify that the continuation of the child in his home is contrary to his best interests, and shall determine whether the department or its agent, as appropriate, has made reasonable efforts, prior to the placement of the child with the department, to prevent or eliminate the need for removal from his home; or shall determine whether the department or its agent as appropriate, has made reasonable efforts to make it possible for the child to return to his parent or guardian. The court may, in its discretion, make its determination concerning said reasonable efforts in written form, but, **in the absence of a written determination to the contrary, it shall be presumed that the court did find that said reasonable efforts did occur."** (emphasis added)

The State amended the law to lessen the administrative burden of documenting RE determinations. The ACF, in its pilot review conducted in June 1995, disagreed with the concept of allowing for the presumption of a CTW and RE determination. The ACF Policy Interpretation Question 86-02 (issued May 8, 1986) states that the court order issued in relation to the removal must clearly evidence a CTW determination. This was in response to a question regarding the eligibility of IV-E cases. The issued raised was:

> "If the court order does not contain language to satisfy the requirement of section 472 (a) (1) of the Act but the court order and/or petition cite State laws that allow removal from the home and/or termination of parental rights, only for the "best interest" of the child, can the reviewer mark...the Title IV-E foster care eligibility checklist "yes?"

Section 472 (a) (1) addresses both CTW and RE determinations. The ACF's response was:

> "No, except under specific circumstances. Under section 472 (a) (1) of the Act, removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation in his home would be contrary to the child's welfare. Therefore, the court order issued in relation to the removal must clearly evidence such a determination."

The ACF's Massachusetts IV-E Pilot Review Report (issued May 10, 1996) further emphasized this point. In its finding, 'The Presumption of Judicial Determination Regarding "Reasonable Efforts" and "Contrary to the Welfare" Was Not Always Documented,' ACF states:

> "However, ACF policy is that Federal requirements (specifically PIQ 86-02) means that there must be a judicial determination of "contrary to the welfare" at

> the time of removal for the child to be eligible for IV-E, regardless of a law such as the one Massachusetts has in place. The ACF is concerned that the provision for presumption of such a determination in State law may have contributed to the failure of some judges to make the appropriate judicial determinations."

Accordingly, ACF recommended to DSS that "Courts must make a written determination regarding contrary to the welfare and reasonable efforts. The best way to insure this is to eliminate current State law allowing presumption of such determinations."

The DSS states that the courts, in awarding custody of a child to the State, must apply Sections 24, 26 and 29C, among others, of Chapter 119 of the MGL (See Appendix D). In doing so, the State believes the DAB decision in Illinois Department of Children and Family Services, DAB 1564 (1996) supports its argument that the documentation provided for cases in the audit is sufficient to establish IV-E eligibility. The DAB reversed the disallowance of several cases when language in the court order paralleled either of two statutes that addressed both CTW and RE determinations. Our analysis of Sections 24 and 26 of Massachusetts law concluded that they both address the CTW requirement only. While Section 29C does address RE determinations, we believe such a determination should be documented as opposed to presumed. The Children's Bureau confirmed our position (August 30, 1999) stating that it has:

> "...consistently maintained that a finding of "reasonable efforts" will not be inferred irrespective of the content of State statute. This position certainly is consistent with the way in which we have conducted our title IV-E reviews. The SSA at section 472(a)(1) requires an individual judicial determination for each child. As a matter of fact, we felt so strongly about the importance of the individual judicial determination that we addressed the issue of court orders "referencing" State statute in the NPRM/final rule that will govern the title IV-E program."

Accordingly, we did not accept any court document that was silent on the RE determination regardless of whether it included CTW language.

The DSS officials have stated that judges consistently make CTW and RE determinations in compliance with Section 29C of the MGL before awarding the custody of a child to the State. Even though written CTW and RE determinations are not required under State law, we found that DSS has been proactive in attempting to increase the claims and adjustments supported by written determinations. On May 10, 1996, ACF issued its "Massachusetts IV-E Pilot Review Report." The report called for complete and consistent documentation of judicial determinations regarding RE and CTW requirements. According to DSS officials, they have been working with DSS attorneys and the courts to have the judges complete the required paperwork to demonstrate compliance with these requirements since February 1996. At that time, no court used a mittimus that included CTW and RE language. Since then, DSS has worked with the district courts to get them to include CTW and RE language in the mittimus.

Another method for documenting CTW and RE determinations is Form 29C, signed and dated by the presiding judge. The intent of Form 29C is to meet the requirements of MGL (Chapter 119, Section 29C) and title IV-E of the Social Security Act. Signing Form 29C is not a routine step for all judges in all courts, and the burden falls to DSS attorney's to ask the judge to sign it. The form serves as a medium for the judge to document (yes, no or n/a) whether he or she determined that:

- Continuation in the home is contrary to the welfare of the child.

- Reasonable efforts have been made prior to the placement of the child to prevent or eliminate the need for removal of the child from his/her home.

- Reasonable efforts were made to make it possible for the child to return to his/her parent or guardian.

The DSS's efforts to improve its process for documenting judicial CTW and RE determinations was evident in our review of a statistical sample of 200 adjustments. We found that documented judicial RE and CTW determinations increased from 66 percent in FFY 1994 to 78 percent in FFY 1997. On March 31, 1999, the Massachusetts legislature amended Section 29C to comply with the Adoption and Safe Families Act of 1997. The State law now requires that:

> "The court shall make the certification and determinations required under this section of the law in written form, which shall include the basis for the certification and determination."

The revised law specifically requires the court to certify in writing that the continuation of the child in his home is contrary to his best interests and shall determine whether DSS or its agent has made reasonable efforts prior to the placement of a child with DSS to prevent or eliminate the need for removal from the home.

Children in Need of Services Cases

The 63 adjustments centering on CTW and RE determinations included 22 CHINS cases. These cases account for $75,537 of the questioned $107,163. Section 39E of Chapter 119, MGL, provides that a:

> "parent or legal guardian of a child having custody of such child...may apply for a petition...alleging that said child persistently runs away from the home of said parent or guardian or persistently refuses to obey the lawful and reasonable commands of said parent or guardian resulting in said parent's or guardian's inability to adequately care for and protect said child."

The DSS believes that these adjustments should not be disallowed since they closely resemble a voluntary case as opposed to a nonvoluntary case. Voluntary placement agreements do not

require RE determinations, but do require CTW determinations within the first 180 days in order for the child to remain eligible for Federal participation. The basis for DSS's argument is that CHINS cases, for the most part, are initiated by the child's parents. Specifically, the parent's decision to initiate the CHINS process is tantamount to a voluntary request for services and should be treated the same for Title IV-E purposes. An analysis of the 22 CHINS adjustments found that 17 were initiated by the parent(s) and 5 were initiated by another party. The 17 adjustments initiated by the parent account for $69,467 of the $75,537 in total CHINS adjustments.

In order to determine whether a parent's decision to initiate the CHINS process is tantamount to a voluntary request for services under Title IV-E, we reviewed related laws and court files for four of the 17 CHINS cases in question. We also interviewed a total of five judges, two magistrates and two probation officers from three judgmentally selected court districts. Our results disclosed that a voluntary placement agreement can be rescinded at any time by the parent. Conversely, a CHINS petition, once initiated by the parent, can only be withdrawn after the parent petitions the judge for dismissal. Because the judge may or may not allow the withdrawal, we believe that a CHINS petition is distinct from a voluntary placement agreement. Further, the judges we interviewed indicated that most parents wanted help dealing with the child, not placement outside the home. Finally, our review of the four court files found that they did not include court documentation demonstrating that any of them were equivalent to a voluntary placement agreement. Therefore, we believe that CHINS adjustments, unless supported by a voluntary placement agreement, amount to a nonvoluntary case since it is necessary to have a court action to place the child under DSS's custody. The Children's Bureau also agrees with our position (August 30, 1999), stating that:

> "... the CHINS petition can be withdrawn/revoked only via court intervention. That negates the validity of MA's assertion that these CHINS cases meet the definition of voluntary placements. Therefore, individual judicial determination of both contrary to the welfare and reasonable efforts are required in order for the State to claim title IV-E."

While the 22 adjustments in question did include a documented CTW determination, they did not include a RE determination.

Missing Case File

We found that for 1 of the 64 adjustments, the file was destroyed. Hence, the case file, totaling $113 ($57 FFP), could not be provided by DSS. Accordingly, we could not determine whether the required CTW and RE determinations were made by the judge.

The OMB Circular A-87, Attachment A, General Principles for Determining Allowable Costs, under Section C.1., factors affecting allowability of costs states that "To be allowable under Federal awards, costs must...be adequately documented." Federal regulation, under 45 CFR Section 92.42, also requires that records are to be maintained for 3 years from the date the State's retroactive claim is submitted, and rights of access must not be limited to the required retention

period but shall last as long as records are retained. Under MGL, records are generally to be maintained for a period of 7 years, and DSS requirements specifically require the indefinite retention of records for open consumer cases. Accordingly, we have disallowed the amounts claimed for Federal reimbursement since CTW and RE determinations were not adequately documented for those adjustments where court documents were missing, and DSS had maintained consumer records for our audit period (FFY 1994 through FFY 1997).

Recommendations

We recommend that DSS improve controls to ensure that DSS staff consistently obtain written CTW and RE judicial determinations.

State Agency and OIG Comments

The State agency disagrees with a number of our conclusions (See Appendix E). Below, we will address the State agency comments on CTW and RE determinations, CHINS cases, and related controls. Other concerns raised by DSS included style, word choice and systems descriptions. We considered any new information DSS provided in its response to the draft report and made revisions where appropriate.

CTW & RE Determinations

The DSS stated that obtaining written judicial CTW and RE determinations are not necessary due to a statutory amendment in 1992 that states "...in the absence of a written determination to the contrary, it shall be presumed that the court did find that said reasonable efforts did occur." The DSS indicated that its judges consistently make CTW and RE determinations in compliance with Section 29C of the MGL before awarding the custody of a child to the State even though written CTW and RE determinations are not required under State law. The DSS supported their position with additional information from PIQ 86-02, Illinois DAB 1564, and several State Supreme Justice Courts (SJC) decisions regarding the levels of evidence. Finally, DSS believes that our interpretation of IV-E requirements focuses on form over substance.

As discussed in the report, we believe the amendment to section 29C of the MGL does not meet the requirement of Federal law. Section 472(a), a part of title IV-E of the Social Security Act, provides that foster care maintenance payments will be available for a child who would meet the AFDC requirements, but only if:

> "(1) the removal from the home ...was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 471(a)(15) have been made.... "

The ACF, in its pilot review conducted in June 1995, concluded that the Massachusetts law, without further evidence in a particular case file, did not comply with Section 472 (a) (1). The

ACF Policy Interpretation Question 86-02 (issued May 8, 1986) states that the court order issued in relation to the removal must clearly evidence CTW and RE determinations. There is a more extensive discussion of this issue on Page 7 of the report. For cases where no Form 29C was present, we found that the court orders for the adjustments in question did not include CTW language, nor a reference to either Sections 24 or 26 of MGL. This issue is presented in more detail on Page 10.

The DSS also offered additional arguments concerning PIQ 86-02. The DSS notes that the PIQ states:

> "...if State law unambiguously requires that removal may only be based on a determination that remaining in the home would be contrary to the child's welfare (and in the appropriate circumstances, that removal can only be ordered after reasonable efforts to prevent removal have been made), it must be assumed that a judge who orders a child's removal from the home in accordance with that State law does so only for the reasons authorized by the State statute. This conclusion can be drawn only if the State law clearly allows removal under no other circumstances except those required under section 472 (a) (1) of the Act."

The DSS maintained that, the State passed its 1992 amendment to Section 29C of the MGL in order to meet Federal eligibility requirements. The PIQ 86-02 further states that:

> " If a State can show that it has such a clear and unequivocal State law, and if the court order is expressly based on that law, then the order can be accepted as sufficient evidence that the required determinations have been made."

We found, for the adjustments in question, that none of the court orders referenced Section 29C or any other section of the MGL, nor otherwise indicate they were based on this law or include any RE language.

Another argument raised by DSS is that it believes the OIG has unfairly distinguished Massachusetts practice from that of Illinois, where the DAB, in Illinois Department of Children and Family Services, DAB No. 1564 (1996), held that the State's claims were allowable when supporting court orders made reference to either of two State statutes. These two statutes in turn clearly referred to both CTW and RE determinations. By contrast, the Massachusetts court orders we have examined did not include RE language, nor did the court orders include a reference to Section 29C, nor any other section of MGL. Further, the Children's Bureau confirmed that RE determinations need to be in writing when it stated that it has:

> "...consistently maintained that a finding of "reasonable efforts" will not be inferred irrespective of the content of State statute. This position certainly is consistent with the way in which we have conducted our title IV-E reviews. The SSA at section 472(a)(1) requires an individual judicial determination for each child. As a matter of fact, we felt so strongly about the importance of the individual judicial determination that we

addressed the issue of court orders "referencing" State statute in the NPRM/final rule that will govern the title IV-E program."

Massachusetts also argues that the rigorous standard of proof under which its courts operate qualifies its cases as meeting Title IV-E requirements. We do not believe the State's standard of proof is relevant since Title IV-E requires the existence of RE language regardless of the judge's final decision on the case.

CHINS

In addition to DSS's position that obtaining written judicial CTW and RE determinations are not warranted due to a statutory amendment in 1992, it believes that CHINS cases that are initiated by a parent should be treated in the same manner as court actions that follow a parent's request for voluntary placement. Accordingly, DSS claims that in those cases, "...CTW is the only judicial determination necessary for IV-E eligibility." DSS also stated that "...the fact that the parent may wish to withdraw the petition after initiating the CHINS process, but may not do so without court approval, does not change the fact that the parent's wishes are no longer controlling once the CHINS process is initiated is no different than what occurs after a voluntary placement agreement is entered into between the parent and the Department." Specifically, DSS stated that within 180 days after the parent signs a voluntary placement agreement, he or she loses control of the child because DSS must obtain a judicial determination of best interests in order to continue IV-E eligibility. The DSS added that it could also initiate court action to prevent the parent from withdrawing the voluntary placement agreement during the first 180 days. Thus, DSS feels that parent initiated CHINS are IV-E eligible since they meet CTW criteria.

To provide careful consideration to the State's position, we reviewed related laws and court files for 4 of the 22 CHINS cases in question and interviewed a total of five judges, two magistrates and two probation officers from three judgmentally selected court districts. Our results disclosed that a voluntary placement agreement can be rescinded at any time by the parent during the first 180 days. Conversely, a CHINS petition, once initiated by the parent, can only be withdrawn after the parent petitions the judge for dismissal. Because the judge may or may not allow the withdrawal, we believe that a CHINS is similar to a nonvoluntary case. Further, the judges we interviewed indicated that most parents wanted help dealing with the child, not placement outside the home. For example, we observed a parent initiated CHINS case where the mother filed the petition, but indicated to the judge that she did not want the child placed outside the home. The DSS attended the hearing and requested the child be placed outside the home. Despite the mother's objections, the child was placed outside the home. Accordingly, we believe that a CHINS case should be treated as a nonvoluntary case. The Children's Bureau agrees with our position, citing that:

> "... a CHINS petition can be withdrawn/revoked only via court intervention. That negates the validity of MA's assertion that these CHINS cases meet the definition of voluntary placements. Therefore, individual judicial determination of both

contrary to the welfare and reasonable efforts are required in order for the State to claim title IV-E."

In regard to the argument that a voluntary placement agreement is similar to a CHINS case, we found that:

- With a CHINS case, the parent can withdraw the voluntary placement agreement within the first 180 days and the child must be returned home within 72 hours unless DSS files a care and protection petition. However, before the State can take custody of the child without the parents control, the DSS has to prove to the court that CTW and RE have been met. The adjustments we questioned were not supported by court documents including RE determinations.

- It is true that a parent loses control after 180 days and in this regard, a CHINS case would be similar to a voluntary placement agreement. However, it is also true that the 180-day period differentiates a voluntary from a nonvoluntary placement. Therefore, we believe that a CHINS case should not be compared to a voluntary placement agreement.

Accordingly, we will continue to disallow CHINS cases unless they include a documented RE determination as well as care and protection cases.

Improving Controls

The DSS commented that it was not a Massachusetts requirement to have documented RE and CTW determination. Rather, as discussed above, DSS relies on the presumption of the law to meet RE determinations. The DSS added that, without conceding this argument regarding its State law, it has undertaken significant steps to obtain 29C forms which document CTW and RE determinations for all children entering placement. Specifically, we found that documented judicial RE and CTW determinations increased from 66 percent in FFY 1994 to 78 percent in FFY 1997. In addition, the State changed its law (March 31, 1999) requiring judicial CTW and RE determinations to be in written form.

Regarding the issue of a statutory presumption, please see our earlier comments for CTW and RE determinations on Pages 7 and 13. However, we do believe that the DSS's actions will certainly help curtail the problems cited in this report.

CONTROLS FOR CLAIMING IV-E COSTS

Our review disclosed that internal controls for claiming Title IV-E retroactive adjustments for Federal reimbursement during the period FFY 1994 through FFY 1997 were not adequate for ensuring that DSS reported accurate cost information. We found $3.7 million ($1.85 million FFP) in miscalculations for the period October 1, 1993 to September 30, 1997. In the March and June 1998 IV-E-12, DSS submitted form IV-E-12s containing adjustments for all but $332,482 ($166,241 FFP) of the $3.7 million ($1.85 million FFP).

According to 45 CFR, Section 92.20, Standards for Financial Management Systems:

> "A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to--1. Permit preparation of reports required by this part and the statutes authorizing the grant, and 2. Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes."

Accordingly, we used Massachusetts Internal Control Guide as the basis for identifying the internal controls that should be in place to prevent or detect the above errors. The internal control weaknesses we identified centered on the accuracy and reliability of accounting data.

The Accuracy and Reliability of Accounting Data

During our audit period, October 1993 through September 1997, DSS claimed about $84 million in nonvoluntary positive adjustments. As the result of reconciling source documents to Form IV-E-12, we identified an additional $3.7 million ($1.85 million FFP) in miscalculations.

Chapter V of the Massachusetts Internal Control Guide, Transaction Processing, requires departments to check the accuracy and reliability of accounting data. When we performed the reconciliation of supporting documentation to Form IV-E-12, we found $3.7 million ($1.85 million FFP) in over claimed costs for the period October 1, 1993 through September 30, 1997.

The over claimed costs were the result of reconciliation differences, clerical errors, and calculation errors. Below is a description of the reconciliation errors we identified.

- We found $427,642 ($213,821 FFP) in IV-E costs claimed that could not be substantiated by supporting documentation. This amount is net of $74,781 in identified underpayments. We identified the difference by reconciling total amounts claimed in nonvoluntary IV-E costs in PCG's Summary Reconciliation Sheets to amounts claimed in nonvoluntary IV-E costs in Form IV-E-12 each of the 16 quarters we reviewed (October 1993 through September 1997).

- A clerical error of more than $1.5 million ($750,000 FFP) was made in the quarter ending June 1997. Apparently, this amount had been recorded twice as a Family Reunification Network (FRN) expenditure. The PCG has stated that it discovered this error in February 1998 and planned to make an adjustment as part of the claim submission for the quarter ending March 31, 1998. However, PCG could not provide any documentation to this effect. This error was not adjusted until March 1999 for Federal reimbursement due to implementation issues of FamilyNet (See Appendix A) which backlogged DSS claims for several quarters.

- Calculation errors amounted to about $1.7 million ($850,000 FFP) in over claimed costs. More than $1.6 million ($800,000 FFP) in overpaid Day Care costs occurred during the 10 quarters ending September 1997. Our review of formulas and their variables disclosed that formulas used to calculate Day Care costs were based on the total number of days a provider could charge during a particular month less the parent fee, instead of the actual number of days a child was in Day Care less the parent fee. The remaining $76,576 ($38,288 FFP) also occurred as the result of using an inaccurate formula in the September 1994 IV-E-12. Specifically, the formula included the same costs twice when calculating unbilled IV-E-12 costs under DSS's Revenue Maximization effort.

In the March and June 1998 IV-E-12, DSS included more than $3.3 million ($1.65 million FFP) in adjustments to reverse the above over claimed costs. The remaining $332,482 ($166,241 FFP) is still outstanding.

Internal Controls for Processing IV-E Claims

Our review of DSS Title IV-E Claiming Procedures and DSS Operational Procedures disclosed that a system of controls over PCG activities for processing IV-E claims for Federal reimbursement of related costs was not clearly documented for the period of our review (FFY 1994 to FFY 1997). Chapter II of the Massachusetts Internal Control Guide, Chapter 647 of the Act of 1989, states that internal control systems are to be clearly documented and readily available for examination. Documentation should appear in management directives, administrative policy and accounting policies and procedures and manuals. Yet, our review of DSS's Operational Procedures disclosed that while it provided a general description of the type of services provided to IV-E consumers, steps toward determining custody, definitions, and other program related topics, it did not provide clear written instructions for ensuring that accurate IV-E cost information was submitted for Federal reimbursement. The PCG's Revenue Management Services Quality Plan for FY 2000, also includes general control objectives for IV-E claim preparation and submission.

We found that DSS's Operational Procedures do provide a general description of the process for scheduling and reviewing consumer cases to ensure that they meet Federal IV-E eligible requirements. They do not, however, provide specific written steps and controls for ensuring that costs submitted for reimbursement are accurate, current, and complete as required by 45 CFR, Section 92.20, Standards for Financial Management Systems. We believe that the over claimed costs and errors we found as the result of reconciling supporting documentation to Form IV-E-12 can be reduced if DSS's Title IV-E claiming procedures included, at minimum, the following controls:

- assign an independent individual to reconcile independent systems and records, including the reconciliation of totals before and after data entry of transactions into PCG's computer systems;

- include management in the review of reports, reconciliations and identified differences.

In addition, this review should be documented;

- validate transactions to prevent or detect duplicate and unrecorded transactions;
- conduct periodic reviews of formulas used to calculate amounts owed in addition to fees, days attended and other related variables included in the formulas; and
- have a process in place to investigate and correct differences disclosed in reconciliations and validity tests by someone who is independent of processing IV-E claims.

A letter provided by PCG officials summarized its current, yet undocumented quality review process which includes several of the above controls. Specifically, an independent individual reconciles records, including the data entry of transactions related to the production of Title IV-E claims;

- a project supervisor reviews financial and reconciliation reports related to the production of the claims;
- a designated staff person periodically reviews spreadsheet formulas used to calculate amounts of claims; and
- a "claim team" investigation staff implement a quarterly review process that can identify and correct differences in reconciliation reports.

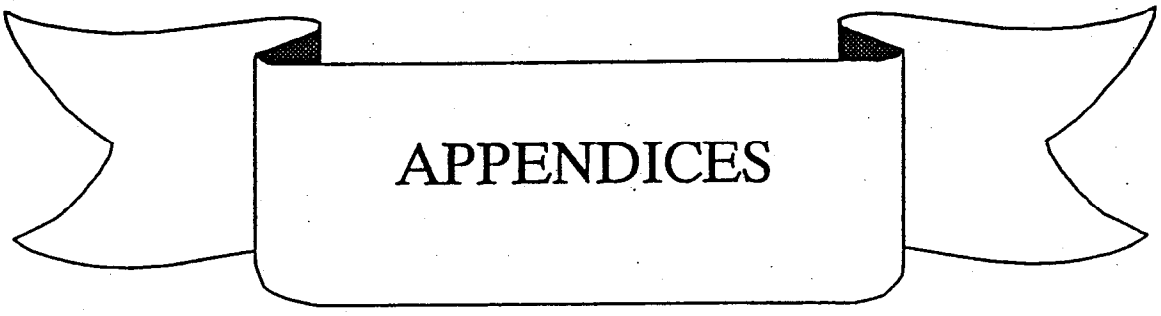
While these controls are not included in DSS Title IV-E Claiming Procedures nor the Revenue Management Services Quality Plan for FY 2000, PCG agrees that they should be integrated with their written operating procedures.

Recommendations

We recommend that DSS:

- make an adjustment for the remaining $332,482 ($166,241 FFP) in identified reconciliation errors; and
- ensure that identified internal control weakness in prior claiming systems have been resolved and included in claim preparation and submission procedures.

The State agency concurred with our finding and made an adjustment of the remaining $332,482 ($166,241 FFP) of the $3.7 million ($1.85 million FFP) in identified reconciliation errors that led to over claiming IV-E costs in July 1999. The State also agreed to integrate controls for processing IV-E claims into written operating procedures.


APPENDICES

OIG'S SUMMARY OF DSS'S PROCEDURES FOR CLAIMING IV-E COSTS FOR FEDERAL REIMBURSEMENT

Our review of the Department of Social Service's (DSS) policies and interviews with DSS and Public Consulting Group (PCG) staff disclosed the following process for claiming IV-E costs for Federal reimbursement prior to the implementation of Family Net. This process was in place during our audit period (FFY 1994 through FFY 1997). However, the below definitions and many of the steps unrelated to computer systems are still used by DSS.

Court ordered custody of a child to DSS is documented in a mittimus. Initial emergency temporary orders must be followed by a court hearing within 72 hours. A judge can grant DSS either temporary or permanent custody. Temporary orders are generally issued for a period of 3 to 6 months until a change in custody, and require a hearing by the expiration date of the mittimus. Permanency custody hearings (called substitute hearings during the period at issue) are held periodically to review the child's status. During the period at issue, the first substitute care hearing is held within 18 months of placement and annually thereafter. With the passage of Chapter 3 of the Acts of 1999 implementing the Adoption and Safe Families Act in Massachusetts, permanency custody hearings are now held within a year of court-ordered custody and annually thereafter. Another type of order issued by a judge is a CHINS (Child in Need of Services). A CHINS is initiated by an outside party (e.g., parent, school official, guardian, police officer, etc.), but may result in the judge awarding custody of the child to DSS. DSS is not a party to CHINs cases. A CHINS case, like a temporary mittimus, is reviewed periodically. These types of cases often pertain to children who are in need of services because they fail to obey school rules (truancy), persistently refuses to obey the lawful commands of his or her parents (stubborn child), or continually runs away from home (runaway).

Types of services or activities claimed by DSS for Federal reimbursement include Foster Care maintenance, Commonworks, FRN, Day Care, and revenue maximization. These services are categorized as Foster Care maintenance payments in the IV-E-12 Form used for Federal reimbursement. Maintenance payments to providers include a monthly stipend, a quarterly clothing allowance and other related costs for the provision of Foster Care. Day Care is a program of child care activities providing direct care to children outside of their homes on a regular basis when foster parents are employed and unable to provide direct care. Commonworks and FRNs are two different categories within group care residential services. Commonworks is a therapeutic foster care and family support services program for adolescents age 12 through 17 years who are in the care or custody of DSS. The FRN is community residential care when a child's behavioral, emotional, or physical needs cannot be met in a less restrictive setting. Revenue maximization is an effort to capture all Federal reimbursement for

which DSS is eligible. A revenue maximization project may be conducted to capture IV-E costs not previously claimed, and would be limited to costs within the allowable 2-year window for claiming.

According to DSS Title IV-E Claiming Procedures, costs for purchased IV-E services are based on rate agreements or contracts with providers. The DSS regional staff enters contract information into DSS's computer system, which accounts for consumer, service and payment information. Basic detailed information includes consumer name, consumer number, SSN, DSS office, facility name and contract number, eligibility dates, billing month, number of service days, billing rates, and whether the case is voluntary or nonvoluntary. Monthly, providers submit either a payment voucher or an invoice (depending on the type of contract) and supporting documentation to the DSS's billing office. Billed amounts are paid through the Massachusetts Management, Accounting and Reporting System. Supporting detailed information is forwarded to PCG where it is manually entered to Excel spreadsheets and computer files used to prepare quarterly IV-E claims for Federal reimbursement. The PCG verifies the eligibility of each consumer included in its database and computer files with DSS's computer system. This is done either manually or electronically, depending on the service area (e.g., FRNs, Commonworks, etc.). Consumers not meeting IV-E requirements are deleted and any medically related costs (e.g., therapeutic) are not included.

Federal regulations allow States to make retroactive adjustments to claimed amounts within 2 years after the quarter the expenditure was made. Interviews with DSS and PCG officials noted that retroactive adjustments to prior claims primarily occur as the result of redeterminations and timing differences. The objective of the redetermination process is to determine whether the status of a consumer has changed since the date of their last eligibility review. Each month, DSS's computer system generates a redetermination form for all consumers with eligibility review dates that have aged 180 days. The PCG caseworkers review the status for each identified consumer. Negative adjustments are made when a consumer originally classified as eligible was actually ineligible for part or all of the 180 days and DSS was reimbursed for IV-E services provided. Positive adjustments are made when the opposite occurs. Timing differences are the result of claiming costs in subsequent quarters because IV-E cost information was not available in the quarter the costs were incurred.

The Methodology section of the report outlines eligibility requirements for Federal reimbursement of IV-E costs. The primary source for documented judicial CTW and RE determinations was a completed Form 29C signed by the judge. The intention of Form 29C (last revised in March 1987) is to meet the requirements of Massachusetts General Laws (Chapter 119, Section 29C) and Title IV-E of the Social Security Act. The form serves as a medium for the judge to document (yes, no or n/a) whether he or she determined that:

- continuation in the home is contrary to the welfare of the child,
- reasonable efforts have been made prior to the placement of the child to prevent or eliminate the need for removal of the child from his/her home, and
- reasonable efforts were made to make it possible for the child to return to his/her parent or guardian.

In February 1998, DSS implemented its FamilyNet system. According to DSS, FamilyNet supports and facilitates Title IV-E claiming activities, including service referral, payment, and case management functions. FamilyNet has been designed to:

- replace the former paper-based system used to record and store consumer information (e.g., case narratives, legal status, scheduled reviews, etc.);
- track payments for all consumers including services provided to IV-E consumers; and
- support the production of Title IV-E claims submitted for Federal reimbursement.

In terms of producing IV-E claims, FamilyNet generates a Title IV-E Expenditure Report that captures payment information for eligible IV-E consumers. Specifically, FamilyNet calculates how much can be claimed for Federal reimbursement for a given quarter, and provides this information in the expenditure report. Adjustments, both positive and negative, are also provided. While we did not review FamilyNet and its capabilities, we believe that it should, at minimum, include controls for addressing the issues we identified in the report.

ESTIMATE OF RETROACTIVE IV-E FOSTER CARE ADJUSTMENTS NOT ELIGIBLE FOR FEDERAL REIMBURSEMENT

To obtain our population for attribute and variable sampling, we identified all positive non-voluntary retroactive IV-E Foster Care adjustments from the DSS' detailed supporting documentation. Summary listings of detailed documentation totaled about $84 million and included 63,611 line items (retroactive adjustments). From this population, we selected a random sample of 200 adjustments. Our sample included four strata, one for each of the Federal Fiscal Years (FFY) we reviewed (October 1, 1993 through September 30, 1997).

Our review disclosed that 64 out of 200 sampled adjustments were over claimed a total of $107,163. The table below summarizes our statistical projections for these results. Based on our statistical sample, we are 95 percent confident that at least 17,229 non-voluntary adjustments were over claimed at least $21,784,977 ($10,892,488 FFP) from October 1, 1993 through September 30, 1997.

Foster Care Retroactive Adjustments	Sample Total	Projected Totals (Mean)	90 % Confidence Interval	
			Lower Limit	Upper Limit
Number of Ineligible Adjustments	64	20,727	17,229	24,225
Amount Overpaid	$107,163	$35,231,098	$21,784,977	$48,677,220

OVERPAYMENTS IDENTIFIED BY STATISTICAL SAMPLE OF 200 ADJUSTMENTS

Sample Number	Entire Case File Missing	No 29c or Court Order	No 29c & Court Document Did Not Include RE	CTW	CTW and RE	Number Disallowed	Amount Disallowed
Fiscal Year 1994							
3					X		$141.00
4	X						$113.40
5					X		$714.25
6					X		$398.83
11			X				$284.20
12					X		$205.25
17					X		$1,409.00
18			X				$319.20
27			X				$162.00
28			X				$1,063.60
32					X		$396.35
36					X		$715.95
37			X				$12,670.47
43			X				$907.00
45					X		$606.20
46			X				$81.90
47			X				$1,382.65
Total	1	0	8	0	8	17	$21,571.25
Fiscal Year 1995							
1					X		$516.80
2			X				$677.45
3			X				$3,804.00
6			X				$19,844.15
8			X				$129.60
14			X				$1,036.80
19			X				$1,282.00
30			X				$750.20
32					X		$152.30
37			X				$800.30
42					X		$470.80
43			X				$4,575.07
44			X				$925.60
47			X				$612.30
48					X		$544.90
Total	0	0	11	0	4	15	$36,122.27

OVERPAYMENTS IDENTIFIED BY STATISTICAL SAMPLE OF 200 ADJUSTMENTS

Sample Number	Entire Case File Missing	No 29c or Court Order	No 29c & Court Document Did Not Include: RE	CTW	CTW and RE	Number Disallowed	Amount Disallowed	
Fiscal Year 1996								
2			X				$2,482.17	
3			X				$469.80	*
7					X		$1,320.05	
8			X				$2,482.17	
9					X		$1,909.36	*
10					X		$502.40	
11					X		$48.60	
13			X				$1,167.60	
16					X		$427.60	
18			X				$1,715.20	
19					X		$710.80	
22			X				$3,715.04	
23			X				$4,354.60	
24			X				$4,382.88	
26					X		$511.10	
34			X				$2,413.04	
40					X		$182.76	
41					X		$3,831.03	
43					X		$241.00	
49			X				$2,241.96	
50			X				$2,214.33	
Total	0	0	11	0	10	21	$37,323.49	
Fiscal Year 1997								
7					X		$552.10	
8					X		$1,200.60	
16			X				$805.20	
23					X		$670.12	
27			X				$307.80	
29					X		$1,309.30	
37					X		$346.43	
39					X		$638.40	
40					X		$3,651.84	
45					X		$1,453.31	
47			X				$1,211.45	
Total	0	0	3	0	8	11	$12,146.55	
Grand Total	1	0	33	0	30	64	$107,163.56	

* A 29c was issued during the retroactive quarter under review. Therefore, a portion of the amount was disallowed.

COMPARISON OF FEDERAL, MASSACHUSETTS, AND ILLINOIS FOSTER CARE STATUTES

Legend:
Italics = denotes contrary to the welfare (CTW)/best interests of the child language.
Bold = denotes reasonable efforts (RE) language.

The Social Security Act, Title IV-E, Section 472(a), provides that foster care maintenance payments will be available for:

a child who would meet the AFDC requirements if "...(1) the removal from the home.....was the result of a judicial determination to the effect that continuation therein would be ***contrary to the child's welfare*** and (effective October 1, 1983) that reasonable efforts of the type described in section 471(a)(15) of this title have been made...."

Section 471(a)(15) states that a state plan under Title IV-E must provide that "...in each case, **reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home....**"

Observation: Federal law requires a CTW and RE judicial determination as part of meeting IV-E eligibility requirements.

Massachusetts General Law (MGL), Chapter 119, Section 24 states that:

"The divisions of the juvenile court department, upon the petition of any person alleging on behalf of a child under the age of eighteen years...that said child is without: ***(a) necessary and proper physical or educational care and discipline or; (b) is growing up under conditions or circumstances damaging to the child's sound character development or; (c) who lacks proper attention of parent, guardian with care and custody, or custodian or; (d) whose parents, guardian or custodian are unwilling, incompetent or unavailable to provide any such care, discipline or attention***...shall issue summonses to both parents of the child to show cause why the child should not be committed to the custody of the department...Said summonses shall include notice that the court may dispense with the consent of the parents to the adoption of the child if it finds that ***the child is in need of care and protection and that the best interests of the child*** would be served by said disposition...If...there is reasonable cause to believe that the child is suffering from serious abuse or neglect, or is in ***immediate danger of serious abuse or neglect,*** and that immediate removal of the child is necessary to protect the child from serious abuse or neglect, the court may issue an emergency order transferring custody of a child under this section to the department or to a licensed child care agency...said transfer...shall...not exceed seventy-two hours...The court at this time shall determine whether such temporary custody should continue until a hearing on the merits of the petition for care and protection is concluded before said court."

Observation: MGL, Section 24 contains only CTW/best interest requirements.

COMPARISON OF FEDERAL, MASSACHUSETTS, AND ILLINOIS FOSTER CARE STATUTES

Massachusetts General Law, Chapter 119, Section 26 states that:

"If the court finds the allegations in the petition proved within the meaning of this chapter, it may adjudge that said child is in ***need of care and protection*** and may commit the child to the custody of the department...or make any other appropriate order with reference to the care and custody of the child as may conduce to his ***best interests***."

Observation: MGL, Section 26 contains only CTW/best interests requirements.

MGL, Chapter 119, Section 29C states that:

"Whenever a court of competent jurisdiction commits, grants custody or transfers responsibility of a child to the department or its agent, the court shall certify that the continuation of the child in his home is ***contrary to his best interests*** and shall determine whether the department or its agent, as appropriate, has made **reasonable efforts prior to the placement of the child with the department, to prevent or eliminate the need for removal from his home**; or shall determine whether the **department or its agent, as appropriate, has made reasonable efforts to make it possible for the child to return to his parent or guardian.** The court may, in its discretion, make its determinations concerning said reasonable efforts in written form, but, in the absence of a written determination to the contrary, it shall be presumed that the court did find that said reasonable efforts did occur (underscoring added).

Observation: MGL, Section 29C states that judicial determinations should include CTW and RE but in the absence of a written determination, it shall be presumed that RE did occur.

MGL, Chapter 119, Section 39G, states that:

"At any hearing to determine whether a child is in need of services, said child and his attorney shall be present. If the court finds the allegations in the petition have been proved at the hearing beyond a reasonable doubt, it may adjudge the child named in such petition to be in need of services. Upon making such adjudication the court, taking into consideration the physical and emotional welfare of the child, may make any of the following orders of disposition:

(a) subject to any conditions and limitations the court may prescribe, including provision for medical, psychological, psychiatric, educational, occupational and social services, and for supervision by a court clinic or by any public or private organization providing counseling or guidance services, permit the child to remain with his parents;

(b) subject to such conditions and limitations as the court may prescribe, including, but not limited to provisions for those services described in clause (a), place the child in the care of any of the following . . . a relative, probation officer . . . ."

Observation: MGL, Section 39G outlines the disposition for a child in need of services case.

COMPARISON OF FEDERAL, MASSACHUSETTS, AND ILLINOIS FOSTER CARE STATUTES

Illinois Statute 703-6 (2) cited under DAB No. 1564 states that:

"If the court finds that it is a matter of ***immediate and urgent necessity*** for the protection of the minor...the minor be...placed in a shelter care facility...and...finds that reasonable efforts have been made or good cause has been shown why **reasonable efforts cannot prevent or eliminate the necessity of removal of the minor from his or her home,** the court may prescribe detention or shelter care and order that the minor be kept in a suitable place designated by the court or in a shelter care facility designated by the Department of Children and Family Services...otherwise it shall release the minor from custody."

Observation: This Illinois statute contains requirement for CTW and RE determinations in emergency cases.

Illinois Statute 705-7 (1) cited under DAB No. 1564 states that:

"If the court finds that the ***parents, guardian or legal custodian of a minor... are unfit or unable, for some reason other than financial circumstances alone, to care for, protect, train, or discipline the minor***, or are unwilling to do so, and that **appropriate services aimed at family preservation and family reunification** have been unsuccessful in rectifying the conditions which have led to such a finding of ***unfitness or inability to care for, protect, train, or discipline the minor***, and that it is in the ***best interest*** of the minor to take him from the custody of his parents, guardian, or custodian, the court may... commit him to the... Department of Children and Family Services for care and service."

Observation: This Illinois statute contains both CTW and RE requirements.

Summary Analysis:

In order for States to receive foster care maintenance payments, Title IV-E requires that both CTW and RE determinations must be made for each case. DAB No. 1564 considered cases eligible for IV-E reimbursement if court orders included language that tracked or followed significant unique language from one of the above Illinois statutes. Both Illinois statutes include CTW and RE requirements. Massachusetts' contention is that the use of use of "need of care and protection" and/or absence of significant unique language is sufficient to show compliance based on the presumed provision of MGL Section 29C. While reference to either Section 24 or 26 of the MGL satisfies the CTW requirement, we believe that a presumed determination as indicated by Section 29C does not comply with RE requirements for IV-E reimbursement.

The Commonwealth of Massachusetts
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JEFFREY A. LOCKE
Interim Commissioner

September 20, 1999

Mr. William J. Hornby
Regional Inspector General
Department of Health and Human Services
Office of Audit Services, Region I
JFK Federal Building
Boston, MA 02203

Re: OIG Draft Report, No. A-01-98-02505 - "Review of Retroactive Adjustments Filed Under the Title IV-E Foster Care Program"

Dear Mr. Hornby:

Enclosed herewith please find the Department of Social Services' response to the Office of Inspector General's draft report entitled, "Review of Retroactive Adjustments Filed under the Title IV-E Foster Care Program."

At the outset, let me express the Department's appreciation for the manner in which this audit was conducted. At all times during this lengthy and extensive process the members of your staff, under the direction of Audit Manager Lori Pilcher, have performed their duties with dedication, professionalism and courtesy. Although we strongly disagree with a number of the conclusions set forth in the draft report, DSS appreciates the thorough and open manner in which your staff conducted its examination.

As detailed in our response, the Department submits that Massachusetts law and practice is fully consistent with the stated purpose of Title IV-E; to insure that the non-voluntary removal of children by the state occurs as a last rather than a first resort. Massachusetts judges have long required that DSS prove that maintaining a child in their home is contrary to their welfare and that the state has used reasonable efforts to keep a family intact. Indeed, in many of the cases reviewed by the auditors as part of their

sample, DSS files clearly demonstrated the extent to which the department had attempted to serve a family prior to a decision that removal was necessary. Many of the case files are hundreds (and in some cases, thousands) of pages in length. The conclusion that the absence of a prescribed form memorializing a judicial determination is violative of federal law has, as you know, serious financial consequences to the Commonwealth of Massachusetts. In light of the fact that the Department has made diligent efforts to insure that judicial determinations are now routinely documented it is reasonable to ask what if any purpose the audit recommendation for repayment serves.

Finally, the draft report makes certain recommendations regarding internal controls and accounting procedures. Many of these are helpful and appreciated.

Thank you for all of the courtesies extended to the Department of Social Services during this process.

Very Truly Yours,

Jeffrey A. Locke
Interim Commissioner

cc. Hugh Galligan, Regional Director, ACF

Response of Massachusetts Department of Social Services to Office of Inspector General's July, 1999 Draft Report on *Review of Retroactive Adjustments Filed under the Title IV-E Foster Care Program*

I. Executive Summary of Department's Response

OIG has concluded that the Commonwealth must make adjustments amounting to $10,892,488 million[1] to reimburse the federal government for Title IV-E funds OIG claims were incorrectly paid to offset the costs of foster care expenses incurred on behalf children in DSS custody.

$166,241 of the amount, representing the final sum owing from a $3.7 million overclaim, is attributable to a few incidents of miscalculations, which the Department acknowledges.[2] We agree with OIG's recommendations to further enhance our internal controls and appreciate OIG's suggestion that our vendor's current quality review process be integrated into their written operating procedures. At the same time, it is important to note that the errors identified by OIG, discussed more fully below, are miniscule in contrast to the thousands of accurate calculations made by the Department from FY '94 through FY '97 and audited by OIG.

The remainder of the disallowance relates to a disagreement between OIG and the Department concerning Title IV-E eligibility requirements pertaining to judicial determinations. OIG contends that 64 cases are fatally flawed on the procedural ground that Massachusetts's court orders lacked precise, technical language satisfying the Title IV-E requirement that whenever a child is removed from the home, a judicial determination must be made that continuation in the home is contrary to the child's welfare (hereinafter "CTW") and that reasonable efforts were made to prevent or eliminate the need for the child's removal from the home or to reunify the family (hereinafter "RE").[3] Significantly, OIG does not challenge the fact that Massachusetts

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[1] Since issuance of the Draft Report, OIG has accepted additional documentation provided in previously disallowed cases, thereby lowering the amount of the adjustment. The amount represents 50% of an alleged $21,784,977 overclaim.

[2] The Department made this final adjustment in its July 1999 IV-E-12 for the quarter ending December 31, 1998.

[3] The number of disallowed cases reflects cases accepted by OIG since issuance of the Draft Report. OIG found that 33 of the cases had documentation meeting the CTW requirement but not the RE requirement, and 31 cases lacked documentation of either determination (including one case for which no documentation could be provided). In several of the 64 disallowed cases, documentation meeting OIG standards, (i.e., 29C forms), was available but deemed not timely, having been issued after the audit period in question.

judges follow the law or that Massachusetts law requires CTW and RE determinations; rather the focus of this audit is premised on the absence of supporting paperwork, and the concomitant elevation of form over substance.

While OIG is correct in a literal sense that judicial determinations were not always formally documented, it is clear that the documentation provided, read in conjunction with state law provisions, establishes that the requisite judicial determinations were made in each case. Moreover, for the reasons discussed below, OIG has erred in applying the RE requirement to cases in the sample pertaining to Child in Need of Services ("CHINS") petitions initiated at the request of the parent.

The remainder of this response will comment on the various sections of the Draft Report, including Appendices, as they appear. Since the Executive Summary (pp. i-ii) is a recapitulation of the major provisions of the report, we request that our comments also be incorporated into the relevant parts of the Summary.

II. Introduction (Pages 1 – 5)

A. Questions about Variations Fully Resolved (Page 2)

OIG cites variation in caseloads and amounts claimed by the Department among its reasons for initiating this audit and refers to such variations as "inconsistencies" without further explanation here or elsewhere in the report. The reference to inconsistencies, without more, may be mistakenly perceived as indicative of some impropriety when in reality, none has been found.

While such variations may have served as a trigger for this audit, OIG is now fully satisfied as to the variations noted. They are the logical result of the Department's effort to claim new service costs for the first time (for example, day care, Commonworks and Family Reunification (FRN) Services) and the fact that some of the costs are high cost services. Questions about increases and decreases in "caseloads" must take into consideration that the number of children for whom retroactive claims were made on a quarterly basis may have fluctuated depending on how many quarters were claimed retroactively for each child.

Since the caseloads and amounts claimed were the product of normal fluctuations in claiming activity as well as the initiation of claiming for some high cost services, we

request that this discussion be deleted from the Draft Report. At a minimum, OIG should indicate that any concerns raised by the perception of "inconsistencies" among the identified variables were fully addressed upon further review.

B. **Reconciliation Issues Answered** (Page 5)

Without providing any specifics, OIG describes difficulties in reconciling IV-E claims with the detailed claim back up provided by the Department/PCG. To put these comments in context, it should be noted that, with respect to the comparison of detailed records and summary records, the differences reflect positive and negative variances. Hence, while this might suggest some overclaiming, it also suggests some underclaiming. More importantly, the differences consist primarily of immaterial differences. For 11 of the quarters, variances are less than 5%. In 8 of the 11 quarters, the differences are less than 1%. Finally, the differences amount to a total variance for 4 years of less than 3% and the development of the claim followed generally accepted accounting principles.

With respect to the comparison of summary back up to the IV-E claim form, they too reflect positive and negative variances and in most cases, very small amounts of money. In seven quarters the variances are *less than $4* and four of the seven are *less than $1*. The Department concedes there is one large variance of $448,243, but all others are very small portions of the total dollars claimed per quarter. The second and third largest variances are both less than 1% of the total dollars claimed for the quarter. Moreover, these variances are both negative, meaning the claims were *lower* than the summary back up would have supported.

In light of the above, the Department requests that the Draft Report be revised to delete the language beginning at the bottom of page 4 with "We concluded that PCG's Summary Reconciliation Sheets..." through the sentence ending at the top of page 5 with "as well as for the reconciliation sheets of the Summary Sheets to Form IV-E-12." Alternatively, we request that OIG provide more detail to make the scope of the reconciling differences clearer. As is, the language can be read to suggest variances of considerable magnitude, which is not the case.

C. **Other comments and requested changes to the Introduction section**:

- Andersen Consulting is misspelled on page 1 and in other places in the report.

- Page 1, paragraph 3 states that "The source of DSS revenues collected by Anderson *(sic)* Consulting was federal grants for various social services programs." Since Andersen did not *collect* revenues, it would be more accurate to describe their role as assisting DSS in claiming and otherwise obtaining funds from various Federal sources.
- At the bottom of page 2, the Draft Report states that "Some training and computer costs are reimbursed at higher FFP rates." While this is a true statement, it is not relevant since the computer costs (SACWIS) would not have been included in the foster care claims reviewed by OIG. Thus, the statement should be deleted.
- On page 3 of the Draft Report, 7 lines from the top, reference is made to "adjustments" initiated by DSS on August 18, 1995. We request that you clarify in the paragraph or by way of a footnote that the Department discovered the $5.7 million overclaim which resulted from an unanticipated consequence of computerized data entry.
- In talking about DSS adjustments during the FFY '94 – FFY '97 period, it would be more accurate to mention that there were negative, as well as positive, adjustments during the time period.

III. Findings and Recommendations – Eligibility for IV-E Foster Care

(Pages 6 – 12)

A. Statement of Overpayment Amounts

As a preliminary matter, the Draft Report in many instances overstates the amounts that the federal government has allegedly overpaid the Commonwealth. For example, the findings and recommendations section of the Draft Report begins at page 6 with the identification of "$3.7 million ($1.85 million FFP) in overpayments...." Related statements appear at the top of page 3 where reference is made to $3.7 million in overpayments and reimbursements of $332,482 of the $3.7 million.

Since the federal government reimburses the Commonwealth fifty percent of the total amount of the allowable foster care costs of IV-E eligible children, it is understandable that the Draft Report may reference the full amounts of foster care costs claimed where necessary and appropriate to the discussion. However, it is clearly wrong

to reference the full amount claimed as an "overpayment" or to suggest that the Commonwealth must reimburse the federal government for that amount.

In light of the above, the Department requests that the Draft Report be amended so that only the amounts actually paid to the Commonwealth appear when referencing an overpayment or required adjustment. For example, on page 6, the second half of the first sentence should be changed to read "...and identified $1.85 million in overpayments by reconciling supporting documents to Form IV-E-12 (State Quarter Report of Expenditures and Estimates)." Likewise in the second full paragraph on page 6, the second sentence should refer only to the FFP amount. As recommended earlier, the fourth full sentence on page 3 should be changed to read in part "...and reimbursed all but $166,241 of the $1.8 million overpayment in the March and June 1998 IV-E-12." The final sentence in the same paragraph should be amended to delete the word "overpayment" from the end of the sentence.

The Department expects that the chart and language on page 6 as well as numbers referenced throughout the section will be amended to reflect cases and documentation accepted by OIG since the issuance of the Draft Report.

B. **CTW and RE Determinations** (Pages 7-10)

The foundation of OIG's contention that 64 cases are not IV-E eligible is its position that, in the absence of a specific order with prescribed language meeting stringent federal agency criteria, it will not presume that Massachusetts judges apply state law requiring judicial determinations when committing a child to the Department's custody. This overly technical interpretation of IV-E requirements elevates form over substance. The documentation provided on each case, read in light of Massachusetts statutes and case law, establishes that the requisite judicial determinations were made and that associated costs are reimbursable under IV-E.

In 1986, ACF issued PIQ-86-02 which addressed "Judicial Determination Requirement for Title IV-E Foster Care." It provided that a State could meet the CTW and RE criteria by having a state law which unambiguously stated that removal of a child from his/her home may be ordered only if based on a determination that remaining in the home would be contrary to the child's welfare, and in the appropriate circumstances, after reasonable efforts had been tried to prevent the need for removal. The PIQ further

provided that, where such a law exists, it must be assumed that a judge who orders a child removed from the home in accordance with that state law, does so only for the reasons authorized by the law. Under these circumstances, a court order removing the child from the home based on the state law is sufficient evidence of the required judicial determinations.

In 1992, in reliance on PIQ 86-02, the Commonwealth amended Section 29C of Chapter 119 of the Massachusetts General Laws to read as follows:

> Whenever a court of competent jurisdiction commits, grants custody or transfers responsibility of a child to the department [of social services] or its agent, the court shall certify that the continuation of the child in his home is contrary to his best interests, and shall determine whether the department or its agent, as appropriate, has made reasonable efforts prior to the placement of the child with the department, to prevent or eliminate the need for removal from his home; or shall determine whether the department of its agent, as appropriate, has made reasonable efforts to make it possible for the child to return to his parent or guardian. The court may in its discretion make its determinations concerning reasonable efforts in written form but, in the absence of a written determination to the contrary, it shall be presumed that the court did find that said reasonable efforts did occur. (Emphasis added.)

Hence, during the audit period, Chapter 119, Section 29C required the court to make the requisite CTW and RE determinations *whenever* a child was committed to, or placed in the custody of the Department. In Massachusetts, the statutory schema under which district, juvenile and probate courts grant custody or commit children to DSS are under Care and Protection (M.G.L.c. 119, §§ 23-29) or Child in Need of Services ("CHINS") (M.G.L. c.119, §39G) provisions. Accordingly, Section 29C is applicable to and subsumed within the custody determinations for care and protection and CHINS' cases. Where there is no written evidence to the contrary, and there is none in the cases at issue, there is no basis to question that the court followed the law and made the requisite judicial determinations.

Moreover, OIG's position is unsupported by federal administrative interpretations such as the DAB decision in Illinois Department of Children and Family Services, DAB No. 1564 (1996).

In Illinois Department of Children and Family Services, (the "Illinois case"), the state appealed a disallowance of federal financial participation (FFP) claimed under IV-E in an OIG audit. The reason for the disallowance was ACF's position that in those cases

Illinois had failed to produce Title IV-E-required court orders, primarily those pertaining to the determination that reasonable efforts were made before the child was removed from his/her home, because the court documents produced by the state did not include language that was clearly consistent with Title IV-E.[4] Illinois argued, among other things, that the disallowance was erroneous because court orders containing language, which paralleled or tracked a specific state statute mandating a reasonable efforts determination were obtained in each of the cases and as such, the cases met the requirements for a RE determination.

Illinois relied on two state statutes, one providing for a temporary custody award when "it is a matter of immediate and urgent necessity for the protection of the minor...that the minor be placed in a shelter care facility...," and the second providing for a dispositional order upon a finding that "the parents of a minor...are unfit or unable to care for, protect, train or discipline the minor, or are unwilling to do so...and that it is in the best interest of the minor to take him from the custody of his parents, guardian or custodian... ." The DAB reversed ACF's findings on 18 of the contested 25 cases. In reaching its conclusion, the DAB stated:

> When the contested court orders contain language that tracks or follows significant unique language from one of the two statutes relied upon by Illinois and when there are other indicia that the court was applying the particular statute, these cases may be viewed as having complied with the RE determination. Id at 8.

Relying on ACF policy and prior DAB rulings, the DAB rejected ACF's requirement that documentation explicitly track federal regulations. The DAB affirmed Illinois' argument that express citation to the state statute in the court documents was unnecessary and that reliance upon a particular statute can be shown by the "use of parallel language and other factors." Similarly, the DAB did not require the court determination to track the language of Title IV-E itself. Typical among the cases found eligible by the DAB, was a case in which the court order reflected a probable cause finding that "[I]t is matter of immediate and urgent necessity for the protection of the minor that the minor be placed in shelter care." A subsequent dispositional order also

[4] Section 472(a) provides in relevant part that foster care maintenance payments will be available if the child's was removed and "(1) the removal from the home ...was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child ["CTW"] and (effective October 1, 1983) that reasonable efforts of the type described in section 471(a)(15) ... have been made... ."

tracked the language in the state law. Thus, the DAB reasoned, it could reasonably be inferred that the court relied on the statute and made a RE determination.

During the time period of the current audit, Massachusetts courts generally utilized a court form (commonly called "29C forms") to indicate their CTW and RE determinations. In most cases where the court utilized the 29C form, a copy would be provided to the Department and it would be kept in the clinical or legal file(s) for each foster child. In some instances the 29C forms cannot be located or may not have been issued by a particular judge in an individual case. However, as set out in the final sentence of Section 29C, the statute contemplates that the RE determination is subsumed within the underlying court custody determination, even in the absence of the signed 29C document.

Further, the Illinois case has direct application to reviewing those judicial determinations under Massachusetts' law where no written order under Section 29C was issued referencing the RE language. Like Illinois, upon filing by the department of a so-called "care and protection" petition, under chapter 119, §24, a child may enter the Department's custody on an emergency basis pursuant to a provision that incorporates a standard of immediate necessity and specifically answers the need for removal from the home. That provision, section 24 of chapter 119, states in relevant part:

> If...the court is satisfied that there is reasonable cause to believe that the child is suffering from serious abuse or neglect, or is in immediate danger of serious abuse or neglect, and that immediate removal of the child is necessary to protect the child from serious abuse or neglect, the court may issue an emergency order transferring custody of a child...to the department... . Said transfer ...shall be for a period not exceeding seventy-two hours... . The court at this time shall determine whether such temporary custody shall continue until a hearing on the merits of the petition for care and protection is concluded before said court.

In addition, the SJC in Care and Protection of Robert, 408 Mass. 52 (1990), held that in order for the court to grant temporary custody of a child to DSS beyond the emergency removal, it must find by a fair preponderance of the evidence that the child is "suffering from serious abuse or neglect, or is in immediate danger of serious abuse or neglect." The temporary custody order (mittimus) issued under Section 24 evidences the judicial determination that immediate removal of the child from his home was necessary to protect the child, and reflects the court's due process determination that the interest of the

child in being free from abuse or neglect necessitates removal from the home. 408 Mass., at 57, 60-62, 66.

Likewise, Chapter 119, §26, our dispositional statute, provides in pertinent part that the court:

> may adjudge that [the] child is in need of care and protection and may commit the child to the custody of the department until he becomes eighteen years of age . . . or may make any other appropriate order with reference to the care and custody of the child as may conduce to his best interests.

The SJC in a long line of Massachusetts child custody of cases has determined that in order for the court to "adjudge that the child is in need of care and protection," and order permanent custody to the Department, it must determine by clear and convincing evidence that the parents of the child are currently unfit to care and provide for their children, thereby warranting permanent removal of the children from the parents' custody, and must also determine by clear and convincing evidence that the child suffered from past abuse or neglect or was at risk of abuse or neglect should the child be returned to his parents. See, Care and Protection of Three Minors, 467 N.E.2d 851,857,861, 392 Mass. 704 (1984); Custody of Two Minors, 487 N.E.2d 1358, 1362-1365, 396 Mass. 610 (1986). Applying the Illinois analysis in light of Massachusetts' rigorous standard of proof under its dispositional statute, there is an even greater legal basis for determining that a court order granting permanent custody to DSS meets the RE standards.[5]

Indeed, even in those situations where the court adjudicates the child in need of care and protection under Section 26(2), but as its disposition grants temporary, as opposed to permanent custody, to the Department, the court has still determined by clear and convincing evidence that the "child's home is presently unsafe, although there exists a real prospect of improvement in the foreseeable future, such that permanent removal of the child is not warranted, although it currently is in the child's best interest to remain in the custody of the Department for the immediate future. Care and Protection of Jeremy, 646 N.E.2d 1029, 1032, 419 Mass. 616 (1995). Again, under the Illinois analysis, the judicial order adjudicating the child in need of care and protection and granting

[5] The same analysis would apply to those cases where under Chapter 119, Section 26(4) and the parallel provisions of Chapter 210, Section 3 the court determines by clear and convincing evidence that the parents are currently unfit and frees the child for adoption. Such a determination would be evidenced by a court

temporary custody to DSS under Section 26(2) suffices to prove that the RE requirements have been met.

In light of the above, a custody order issued pursuant to these statutes, under the reasoning in the Illinois case sufficiently establishes compliance with the judicial determinations provisions of section 472 of IV-E, as one can reasonably infer from the wording of the court custody order and other factors that the court relied on the applicable Massachusetts statutes in making its reasonable efforts determination.[6]

The Draft Report unsuccessfully attempts to distinguish Massachusetts practice from that of Illinois. At page 9, it states that, in the Illinois case, the "DAB reversed itself when language in the court order paralleled either of two statutes *that addressed both CTW and RE determinations.*" (Emphasis added.) Similarly, Appendix D notes that Chapter 119, Sections 24 and 26 only contain CTW language whereas the Illinois statute at issue in DAB No. 1564 contained both the CTW and RE reference. Hence, OIG reasons, an order specifically issued pursuant to the Illinois statute does in fact meet the CTW and RE determinations while an order issued pursuant to Chapter 119, Section 24 (or Section 26) does not.

OIG's conclusion ignores a basic rule of statutory construction, namely, that statutes should be read together when the language clearly directs that construction. The only major difference between the Illinois statute and Section 24 is that, in Massachusetts, the CTW and RE language appears in a separate section, namely Section 29C.[7] Section 29C clearly and unequivocally instructs that "*[w]henever* a court of competent jurisdiction commits, grants custody or transfers responsibility to the department...the court shall certify that the continuation of the child in his home is contrary to the child's best interests, and shall determine whether the department...has made reasonable efforts... ." (Emphasis added.) In sum, in the process of awarding custody under Section 24, or any other section of Chapter 119, which permits a court to transfer custody of a child to DSS, the court must determine CTW and RE. In the

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decree. Indeed, Chapter 210, Section 3, includes within its terms along with the determination of parental unfitness the consideration of efforts that the Department made to make it possible to return the child home.

[6] The same analysis would apply with respect to the CTW judicial determination. See discussion, Illinois Dept. of Children and Family Services at p. 5, citing Pennsylvania Dept. of Public Welfare, DAB No. 1508 (1995).

[7] Specific language in §24 referencing the need for removal to protect the child from serious abuse or neglect also satisfies the CTW requirement.

absence of evidence to the contrary, it must be presumed that the judge followed the law and found that it was contrary to the welfare of the child to remain in the home and that reasonable efforts were made prior to removing the child.

In virtually all of the non-CHINS cases in the sample, children were removed from their homes on an emergency basis for reasons related to such issues as substance abuse and domestic violence and/or severe neglect. They include cases of infants born testing positive for cocaine to parents with long histories of DSS involvement. OIG was provided the affidavits submitted to courts for their consideration in awarding custody to the Department. The affidavits described multiple efforts to work with the family to avoid removal. When an affidavit filed in a care and protection proceeding recites prior efforts to work with a family *and* the need for removal on an emergency basis, *and* a judge grants custody to the Department in light of this information pursuant to Section 24, *and* after consideration of Section 29C, there is no reasonable basis to conclude that the case in not IV-E eligible. By reaching that conclusion for want of a 29C form, OIG is denying funding for the very children Congress meant to help States support while in placement.

To their credit, OIG auditors committed an extraordinary amount of time to reviewing Department files for 29C forms. Through that process one fact remains beyond cavil - that in nearly every case the Department had volumes of documents relating to its involvement with the children and/or their families. For example, in Sample case #32 (FY 94), the child was the sixth born to a mother with a history of Department involvement that extended over approximately six years. Her other five children were permanently removed due to her drug and alcohol abuse. Upon the birth of the sixth child, the Department was notified after the mother failed to engage in services recommended and provided by the hospital. The mother also appeared to be under the influence of drugs. The Department reopened its case and attempted to provide services focused on assuring that the child received necessary medical care and that the mother received services for her addiction. The mother consistently failed to engage in services and often missed critical appointments for her infant son who, in the meantime, failed to gain weight. It was after the Department's social worker found the mother walking down the road intoxicated and dirty, and the baby, then five months old, left home alone in his

crib. that the Department sought and obtained custody of the child. In another example, Sample case #45, FY 94, the Department made efforts over the course of two years before initiating court action to remove the child at issue. The issues within the home included domestic violence, inappropriate use of drugs and alcohol while caring for the children, and neglect of the child's (and her siblings') basic needs. After providing services that the Department believed had helped the family, the Department closed the case. Within a short time, it was necessary to reopen the case for reasons related to the parent's inability to meet the children's basic needs and efforts were initiated again to assist the family. It was when the mother left the children, then 2 years 9 months, and 1 year 8 months, home alone, locked in a bedroom for over 40 minutes, that the Department sought and obtained emergency custody of the children.

The purpose of the CTW and RE requirement is to insure that removal of children from their homes is neither arbitrary nor a first resort of state child protection agencies. The Department files demonstrate beyond dispute that the Department sought removal of children only after extensive intervention efforts failed and/or it was essential to protect the health and safety of the child.

For the foregoing reasons, the Department objects to OIG's findings and recommendations regarding judicial determinations of CTW and RE.

The Department also requests that the following changes be made to this section of the Draft Report.

- The penultimate sentence of the first paragraph of the CTW and RE Determinations section states that "We found that DSS did not have adequate controls in place to ensure that procedures for documenting CTW and RE determinations were consistently followed." This statement suggests that had the Department known there was no 29C form the Department would not have claimed the child. This statement ignores the fact that the Department's position has been that the child was still eligible in light of the state law. Thus, the issue is not one of controls, but interpretation of what Title IV-E requires to establish eligibility. A more accurate statement might be: "*We found that DSS's interpretation of IV-E requirements*

caused them to find children IV-E eligible in circumstances in which a judicial determination of CTW and RE was not reflected on a 29C form."

- At the top of page 8, after the quote, reference is made to "These regulations... ." Since the quoted language is statutory and not regulatory, the word "regulations" should be changed to either "provisions" or "statutes."
- In the following paragraph on page 8, reference is made to "current procedures." It should be changed to "then current procedures."
- In the paragraph following the 2 bulleted items on page 8, the description of DSS's position is more accurately stated as follows: *Although DSS increased its efforts following the ACF Pilot Review to have 29C forms completed in all cases, the agency takes the position that lack of a 29C form does not preclude eligibility for the cases under review given Massachusetts law as it existed during the audit period. Central to its argument is G.L. c. 119, §29C which read as follows:*
- The Department objects to the statement made at the bottom of page 8 that Section 29C "undercuts Federal law" and the inclusion of a quote from ACF's *Massachusetts IV-E Pilot Review Report* in the middle of page 9 stating that Section 29C "may have contributed to the failure of some judges to make the appropriate judicial determinations." Such statements suggest a failure to distinguish between making judicial determinations and providing written evidence of them, thus allowing for a facile but erroneous conclusion that Massachusetts judges are not following state (and federal) law. Section 29C directs courts to make the required determinations; it simply states that in the absence of written evidence to the contrary, it will be presumed that the judicial determinations were made and answered in the affirmative.
- The Department requests that the statement at bottom of page 9 that the Department "believes it followed the spirit of the Illinois DAB 1564," be changed to the Department *"believes the DAB decision in Illinois Department of Children and Family Services, DAB No. 1564 (1996) supports its argument that the documentation provided for cases in the audit is sufficient to establish IV-E eligibility."* The first sentence of the same paragraph, referencing provisions of G.L. c.119 under which the Department is given custody of a child, should note section 39G, applicable to children in need of services (CHINS), as well.

C. **Children in Need of Services Cases** (Page 11)

While Section 29C applies to cases in which children are committed to the Department pursuant to the CHINS process, and thus the CTW and RE determinations are subsumed within the custody order, the Department also believes that CHINS cases that are initiated by a parent should be treated in the same manner as court actions that follow a parent's request for voluntary placement. In those cases, CTW is the only judicial determination necessary for IV-E eligibility. See, Section 472 of Title IV-E pertaining to removals following a voluntary placement agreement. In the CHINS cases under review, all meet the CTW requirement. For this additional reason, the CHINS cases disallowed by OIG are IV-E eligible.

OIG correctly points out on page 8 of the Draft Report that Congress included the CTW and RE provisions in Title IV-E as "...an important safeguard against inappropriate (state) agency action." In other words, the intent of requiring a CTW and RE determination is to provide a judicial check on the child protection agency from removing a child against the wishes of the parent(s) without first considering whether services can be provided to the home to preserve the family.

In CHINS cases, the same concern does not exist since such cases are not initiated by the Department nor does the Department propose to remove the child from the home. In fact, as the Draft Report notes, most of the cases in the sample were initiated by the parent and resulted in orders to the Department to place the child. By voluntarily coming forward to initiate an action, the parent is acting no differently than the parent who comes to the Department seeking services. In fact, there is evidence in the case files reviewed by OIG, that many of the parents had been involved with the Department on a voluntary basis. For example, Sample #24, FY 96, is a case in which the mother of a 13 year old child voluntarily applied to the Department for placement services. Her son had a history of problems, including being abusive towards younger children and animals, and verbally abusing his mother. The mother signed a voluntary application for services stating that her son needed help, that she could not provide for him anymore and asking that he be placed in a foster home. The mother informed the Department that her son had been living with his aunt for the two prior months, that he would likely not be able to remain with the aunt due to his behavior and that he could not return home. While the

Department assessed the case, the mother also filed a CHINS petition. The court committed the child to the Department's custody and the child was placed in a foster home.

The CHINS statute makes clear that a CHINS petition will not issue unless it is first determined that it is in the child's best interest for a petition to issue. The CHINS process typically includes efforts to meet the child's needs while still in the home, through referrals by the probation office of the Juvenile Court. See, M.G.L. c.119, §39E. In practice, efforts are made to address the child's needs in the home and in the community before resorting to judicial intervention.

The fact that a parent may wish to withdraw the petition after initiating the CHINS process but may not do so without court approval, does not change the fact that it was the parent's voluntary action that commenced the proceeding. The fact that the parent's wishes are no longer controlling once the CHINS process is initiated is no different than what occurs after a voluntary placement agreement ("VPA") is entered into between the parent and the Department. Whether or not the parent agrees, within 180 days after a parent places his/her child with the Department, Section 472 of Title IV-E instructs that the Department must obtain a judicial determination that continued placement is in the child's best interests to continue IV-E eligibility. In such cases, the parent's wishes are also not determinative of the outcome; instead, the focus is on the child. Similarly, if a parent enters into a VPA with the Department and the child is placed, the parent may not have an absolute right to have the child returned home. If the Department believes that doing so would expose the child to harm, see 110 CMR 4.12, the agency may initiate a court action to maintain the child's placement.

In sum, the parent-initiated CHINS cases are IV-E eligible since they meet the CTW criteria.

D. **Missing Court Documents and Case Files** (Page 11)

Based on conversations with OIG staff, the Department assumes that this section will be amended to reflect that the file was destroyed in one case and no documents could be provided.

E. **Recommendations** (Page 12)

The Department objects to the recommended adjustment since, as demonstrated above, the judicial determination requirements of Title IV-E were met in the cases at issue.

Lack of controls is not the reason why cases were claimed without 29C forms. Rather, the claimed cases were the result of a differing interpretation of what Title IV-E required given Massachusetts law as it then existed. In our view, the requisite judicial determinations were subsumed within the custody order in the absence of written evidence to the contrary.

Since the ACF Pilot Review report of May 1996, without conceding our state law argument, the Department has undertaken significant steps to obtain 29C forms for all children entering placement. These efforts have resulted in significantly higher numbers of 29C forms issued in our cases. Among other things, the Department's vendor reviews clinical and legal files on a monthly basis to determine whether 29C forms have been issued in otherwise eligible IV-E cases.

Cases lacking legal documentation are identified to the Office of the General Counsel and Regional Legal Offices for follow up. The cases are reviewed in the subsequent month(s) to determine if a 29C form has been obtained. Regional Legal Counsel, in turn, have developed strategies to monitor the number and quality of 29C forms (to assure they have been completely filled out and signed by the court), obtained by staff in their office. In some regions, Regional Legal Counsel have met with court personnel to address quality control and efficient processing of 29C forms. The topic has been on the agenda of virtually every biweekly meeting of the Department's Legal Managers (i.e., the General Counsel, Deputy General Counsels, Regional Legal Counsels and their Deputy Regional Counsels) and the General Counsel for the Department worked with the District Court to reach agreement on a new form for a mittimus, incorporating CTW and RE language, that was given to ACF for its review and approval.

Most importantly, as of March 31, 1999, Section 29C of chapter 119 was modified to require that when the Department removes a child from his or her home and the court sanctions the placement, the court must make a *written CTW and RE determination*. Hence, a child who now enters placement will not be considered IV-E

eligible and claimed by the Department until a court document is issued with the requisite affirmative determinations. Meetings with the Juvenile Court and Probate Court to discuss this and other changes to state law driven in large part by the Adoption and Safe Families Act, has heightened awareness of the CTW and RE requirements and will contribute to increased compliance rates.

IV. Findings and Recommendations – Controls for Claiming IV-E Costs (Pages 12 –15)

A. The Accuracy and Reliability of Accounting Data (Page 13)

The Department does not contest the errors identified in this section. However, we think it would add to an understanding of the extent of the issues around accuracy and reliability, to note that $3.7 million in errors represents only 4.2% of the total claims made. Put another way, the audit revealed a 95.8% rate of accuracy. Additionally, for a better understanding of the context, we request that language be added clarifying that the $1.85 million in overpayments resulted from only a few incidents of miscalculations.

B. Internal Controls for Processing IV-E Claims (Pages 14 –15)

We agree with the controls recommended by OIG and the recommendation that our vendor's quality review process, which enhances internal controls for processing IV-E claims, be integrated into the written operating procedures.

V. Appendices

A. Appendix A

Appendix A, a two and one-half page summary by OIG reflecting its understanding of almost 100 pages of the Department's procedures for claiming federal reimbursement of IV-E costs, is an inaccurate and incomplete representation of the procedures. Appendix A should be deleted and replaced with a copy of the Department's actual procedures, or it should be clearly labeled "OIG's Summary of DSS Procedures for Claiming IV-E Costs for Federal Reimbursement" and revised. Needed changes include the following:

- The statement in Paragraph 2 that "No additional court actions are required once a judge grants DSS permanent custody of a child" is inaccurate. Permanency hearings

(called substitute hearings during the period at issue) are held periodically to review the child's status. During the period at issue, the first substitute care hearing was held within 18 months of placement and annually thereafter. With the passage of Chapter 3 of the Acts of 1999 implementing the Adoption and Safe Families Act in Massachusetts, permanency hearings are now held within a year of court-ordered custody and annually thereafter.

- The statements in the same paragraph about CHINS cases should be revised. The following language may be substituted: "DSS may also be given custody of a child through a court action known as a "CHINS" case. Such cases are initiated at the request of a parent or guardian or school official who asks the court to adjudge the child in need of services ("CHINS"). DSS is not a party to CHINS cases. A child may be adjudicated a CHINS only if a court finds that the child is truant or persistently fails to follow school rules, or persistently runs away from home, or is a "stubborn child," i.e., persistently refuses to obey the lawful and reasonable commands of his or her parent or guardian. CHINS cases are reviewed periodically."
- Cost categories claimed for foster care do not include Commonworks, FRNs and day care, or revenue maximization (since this is an approach to, not a type of claiming).
- Discussion of FRNs and Commonworks suggests that these are two separate programs for which the Department claims IV-E reimbursement. It would be more accurate to describe group care/residential services, and to present Commonworks and FRN as two different categories within that grouping.
- Discussion of revenue maximization omits important details including the fact that these projects were implemented in consultation with ACF, and that revenue maximization efforts are entirely consistent with Federal regulations governing the eligibility of consumers and the allowance of costs.
- The explanation of documentation and analysis of service delivery and payment data is incomplete. While the Draft Report discusses manual data entry and verification of consumer eligibility, it does not point out that these activities represent only one part of the entire process. The automated reports (from ASSIST) that were used for claim production are not discussed, and the process that the Department/PCG used to analyze data and produce the claim is obscured.

- Discussion of revenue maximization. on page 2. should mention that these projects were undertaken for services being claimed for the first time (day care and Commonworks) as well as for the newly identified eligibility periods of DSS consumers.
- Discussion of FamilyNet includes the statement that "The purpose of FamilyNet is to support and facilitate Title IV-E claiming activities... ." This is not correct. FamilyNet does support and facilitate claiming, but that is not the purpose of FamilyNet. This section also says that FamilyNet tracks payments for services to IV-E consumers which is not entirely true. The system tracks payments for all consumers. not just IV-E eligible consumers.

B. **Appendix B**

Based on our discussions with OIG staff. we expect that the chart will be revised to reflect cases accepted since the Draft Report was issued.

C. Appendix C

As with Appendix B, we expect that the final report will include a revised chart to reflect cases accepted by OIG since the Draft Report.

We also request OIG to reconsider its decision that the standard mittimus ("mitt") issued by the District Court Department of the Trial Court does not at least satisfy CTW. The only difference between the Juvenile Court mitt and the District Court mitt is that the Juvenile Court mitt states in the body of the order that a petition has been filed alleging that the named child is in need of care and protection whereas the District Court mitt states in the left hand corner of the document that it is an "order in care and protection matter," but does not repeat the words "care and protection" within the body of document while referencing the case pending before the court in which the Department is awarded custody. See Exhibits 1 and 2. There is NO substantive difference between the two documents. *If OIG continues to disagree that the Department has shown CTW and RE in all of the cases, we request that OIG reconsider and find that the District Court mitts that have been provided satisfy the CTW requirement.*

D. Appendix D

The chart is misleading to the extent it indicates that Sections 24 and 26 only mention CTW. Both sections are intended to be read with Section 29C. As such, CTW

and RE are incorporated into Sections 24 and 26, as well as Section 39G, by operation of law.

Section 39G should be included in the final version of Appendix D.

PROTECTION MATTER	District Court Department
COURT DIVISION	DATE AND TIME ON WHICH CASE WILL BE NEXT REVIEWED (if applicable)

CUSTODY ORDER

Whereas a case concerning the below-named child(ren) has been before this court, it is ORDERED that said child(ren) be committed to the custody of:

☐ The Massachusetts Department of Social Services

☐ _____ (specify other licensed child care facility or qualified individual)

☐ on a temporary basis until the review date noted above, when this case will next be reviewed.

☐ until the age of eighteen or until, in the opinion of the Department of Social Services, the object of the commitment has been accomplished, whichever occurs first.

☐ other (specify:)

CHILD'S FULL LEGAL NAME	DATE OF BIRTH	CHILD'S FULL LEGAL NAME	DATE OF B
A.		D.	
B.		E.	
C.		F.	

OTHER TERMS AND CONDITIONS

IT IS FURTHER ORDERED: (Use this space to enter any other terms and conditions with respect to the child(ren) named above, or a other child who is named in this petition but who is not subject to the above order of commitment. Attach additional page, if necessary.)

EXHIBIT 1

SIGNATURE OF JUSTICE	DATE OF ORDER	CLERK-MAGISTRATE OR ASST. CLERK
X		

CARE AND PROTECTION
TEMPORARY MITTIMUS
DSS

DOCKET NUMBER:

COMMONWEALTH OF MASSACHUSETTS

Juvenile Court Department
Boston Division
17 Somerset Street
Boston, MA 02108

TO THE DEPARTMENT OF SOCIAL SERVICES, OR ANY INDIVIDUAL OR AGENCY DESIGNATED BY THE COURT, OR THE SHERIFF, HIS DEPUTIES, OR ANY POLICE OFFIC WITHIN THE COMMONWEALTH, OR ANY CONSTABLE, OR ANY COURT OFFICER.

Whereas upon the petition of , alleging on behalf of

a child under the age of eighteen years, within the jurisdiction of this Court, that said child is in need of care and protection, and the child wa taken into custody upon a lawful precept and/or brought before this Court; and,

Whereas the petition has been continued for further hearing;

It is therefore **ORDERED** that the child be committed to **THE DEPARTMENT** SOCIAL SERVICES until pending said further hearing on said petiti

WHEREFORE YOU ARE COMMANDED TO FORTHWITH DELIVER SAID CHILD INTO THE CUSTODY OF THE SAID DEPARTMENT.

WITNESS:
Paul D. Lewis
FIRST JUSTICE

John P. Bulger
CLERK MAGISTRATE

DATE ISSUED:

EXHIBIT 2