FOSTER CARE ADMINISTRATIVE COSTS

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This Report

Entitled "Foster Care Administrative Costs", this study was conducted to evaluate the high absolute levels and wide variation among States in Title IV-E foster care administrative and training costs.

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FOSTER CARE ADMINISTRATIVE COSTS

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EXECUTIVE SUMMARY

PURPOSE: The purpose of this inspection was to evaluate the seemingly high absolute levels and wide variation among States in title IV-E foster care administrative and training costs. This involved an examination of:

- indicators of foster care administrative cost;
- transfer of costs from the States to the Federal Government;
- efficiency of State program operations;
- Office of Human Development Services (OHDS) performance in handling administrative cost issues; and
- legislative approaches to cost containment.

BACKGROUND: Public Law (PL) 96-272 (the Adoption Assistance and Child Welfare Act of 1980) established title IV-E of the Social Security Act, and was seen as a means of reforming foster care and adoption assistance in the United States. At the time the Act was passed, it was believed that the public child welfare system had become a holding system for children living away from their parents with little hope of either being reunited or achieving a permanent home.

- Title IV-E provided for Federal payment of 50 percent of the administrative costs, 75 percent of the training costs and a variable share (not less than 50 percent) of the maintenance cost associated with the care of eligible foster care children. Funds were also made available for adoption assistance to aid in the placement of special needs children.
- Congress believed that title IV-E administrative and training costs would not exceed 10 percent of maintenance cost and that total expenditures for foster care would be capped. Except for Fiscal Year (FY) 1981, the provisions for triggering the cap were never met. For all practical purposes, the foster care program has functioned as an entitlement program since its inception.
- Federal expenditures for title IV-E foster care administrative and training costs have been much greater than expected. Between FYs 1981 and 1985 these costs rose by more than 438 percent - from $30.4 to $163.4 million. The average number of title IV-E children served each month rose only about 5 percent - from 103,000 to 108,000. Over this same period, the overall ratio of administrative and training costs to maintenance costs rose from .11 to .49.

MAJOR FINDINGS: The rise in total Federal share of foster care administrative and training costs and the wide variation among States in the ratio of administrative to maintenance costs were unanticipated. Some analysts argue that States are either charging for unallowable administrative expenses or operating inefficiently. Foster care administrative costs are alleged to be far out of line when compared with the cost of running the Aid to Families with Dependent Children (AFDC), Medicaid and Food Stamp programs.

- The title IV-E definition of administrative costs covers a wide variety of program and service activities that would not be viewed as administrative costs under AFDC, Medicaid or Food Stamps. These include: referral to services; preparation for and participation in judicial determinations; placement in foster care; development of a case plan; case reviews; case management and supervision; recruitment and licensing of foster homes and institutions; rate setting; and a proportional share of agency overhead. The differences in the definition of allowable administrative costs make comparisons among these programs difficult and for the most part inappropriate.

- Some of the variation in foster care administrative costs appears to be the result of differing State strategies or abilities to claim costs, and not because of differences in effort or efficiency. Not all States have in place systems necessary to document all allowable administrative costs. Some have chosen to deliberately underclaim costs in order to transfer leftover amounts to title IV-B child welfare services. Because of this, some measures of relative State performance such as administrative cost per child and the ratio of administrative to maintenance costs better reflect charges to the Federal Government rather than the costs of running the program. Similarly, the use of percent change in administrative cost to measure relative growth over time is complicated. Many States had an artificially low base in the early years due both to their inability to claim all appropriate costs and the absence of required program components.

- States maintain they are charging the Federal Government only for administrative costs allowed by the legislation and necessary for the operation of their programs. The proposed reduction in Federal payment for administrative costs is seen as transferring these expenses back to the States rather than controlling costs per se.

- The OHDS has sought to narrow the scope of allowable administrative costs by requiring that the expense of such activities as preplacement services and the recruiting

and licensing of foster care providers be prorated on the basis of the ratio of IV-E to non-IV-E children. A March 1987 decision in a case brought by Missouri before the Departmental Grant Appeals Board appears to have limited the ability of OHDS to control these types of costs by defining as payable a variety of services which OHDS had previously sought to exclude. The full implications of this decision are yet to be determined.

RECOMMENDATIONS: Over the last several months, OHDS has taken steps to evaluate the management of the foster care program and is currently involved in a structural realignment aimed at improving its own performance. There are a number of additional short and long range actions which can be taken to help achieve this objective:

- Seek interpretation of the Missouri decision of the Grant Appeals Board and issue a policy clarification to the States.

- Conduct and issue an analysis of cost allocation plans (CAPs) and eligibility determination systems used by States that have employed consultants who allegedly push interpretation of the Act and regulations to the limit.

- Develop a national protocol for use by regional office staff in the routine evaluation of CAPs. Both program and financial staff should be involved in these reviews.

- Revise the methodology for conducting retrospective administrative cost reviews to incorporate a broader look at the relationships between cost, program effort, and program outcomes.

- Reevaluate the effectiveness of PL 96-272 in reforming the foster care delivery system and encouraging adoption. Include an examination of the:

  - incentive structure in the Act;
  - continued funding of foster care on an income-related basis;
  - tradeoffs between reduced rates of participation and expanded client coverage; and
  - elimination of artificial distinctions between administrative and maintenance costs.

AGENCY COMMENTS: In its comments on this inspection, OHDS states that it "... believes the report to be a valuable addition to the body of knowledge about administrative costs in the title IV-E

program and that [the inspection] makes observations that [OHDS has] tried to communicate about the complexity of the legislation and State administration..." The OHDS indicates that it "... will seriously consider each of the recommendations... [and has] already begun implementation of some or parts of some of the recommendations."

The OHDS indicated that in the draft inspection report the impact of the findings in the Missouri decision of the Grant Appeals Board was overstated. We have now included the full text of this decision as Appendix C of this final report for the reader to examine. The OHDS was also concerned that the discussion of the agency's opinion on cost transfer by the States was also inaccurate. A review of the discussions with OHDS Headquarters and regional office personnel, along with the interviews of State officials, confirmed that there was a widespread perception that OHDS considered many expanded State claims for foster care administrative cost highly inappropriate if not specifically illegal. If these perceptions do no reflect official OHDS policy, then a clarifying policy memorandum might be needed.

In order that the Office of Inspector General (OIG) may track the specific response to this report, it is recommended that OHDS provide an agenda and timetable for the recommendations it plans to implement and an additional explanation of why some, or parts of some, recommendations have been rejected.

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I. INTRODUCTION

Purpose and Objectives

The purpose of this inspection was to evaluate the seemingly high absolute levels and wide variation among States in title IV-E foster care administrative costs. This involved an examination of:

- indicators of foster care administrative cost;
- transfer of costs from the States to the Federal Government;
- efficiency of State program operations;
- the OHDS performance in handling administrative cost issues; and
- legislative approaches to cost containment.

Questions emerged from this inquiry regarding whether foster care administrative costs were more unanticipated than inappropriate, the extent to which the level and rate of growth of these costs actually constitute a serious problem for the Department, and what standards should be used to judge the appropriateness of these administrative costs.

Methodology

This inspection built on work which was done as part of the "Program Inspection of AFDC, Medicaid and Food Stamp Administrative Costs" issued in December 1986. For that study, discussions were held with personnel of the Office of the Secretary, Department of Health and Human Services (HHS) and the involved Operating Divisions (OPDIVs). Site visits were made to 10 States and a representative from OIG participated as a member of a work group on welfare administrative costs established by the Office of the Assistant Secretary for Planning and Evaluation (ASPE) during the fall of 1986.

In order to gather additional data specifically related to foster care administrative costs, discussions were held with Headquarters and/or regional office personnel from the Office of Management and Budget (OMB), the Office of the Assistant Secretary for Management and Budget (ASMB), ASPE and OHDS. In addition, site visits were made to nine States (Pennsylvania, Maryland, Georgia, Florida, Indiana, Illinois, Minnesota, Oregon and Washington) to get their insight into these issues. The States selected did not constitute a random sample of experience and as such were not formally representative of the national

experience as a whole. However, they are geographically disbursed and provide some cross-national representation. Also, they give a sense of some regional contrasts between relatively high and low cost States (Maryland vs. Pennsylvania; Georgia vs. Florida; Illinois and Minnesota vs. Indiana; and Washington vs. Oregon).

In addition to the discussions, cost allocation materials from each of the above States were reviewed. Also examined were draft reports prepared by OHDS as part of their internal studies of administrative costs, task force documents, and contract studies.

Background

The PL 96-272 (the Adoption Assistance and Child Welfare Act of 1980) established title IV-E of the Social Security Act which was seen as a means of reforming the Nation's approach to foster care and adoption. The first Notice of Proposed Rulemaking described the impetus behind this legislation as the:

> "Belief of Congress and most State Child Welfare administrators, supported by extensive research, that the public child welfare system responsible for serving children, youth and families had become a receiving or holding system for children living away from parents, rather than a system that assists parents in carrying out their roles and responsibilities and provides alternative placement for children who can not return to their own homes. Studies [had shown] that under [then] current policies and procedures, thousands of children [were] stranded in the public foster care system with little hope of being united with their families or having a permanent home through adoption or other permanency planning, thereby causing harm to the children and high costs to the States." (Federal Register/Vol. 45, Number 252/Wednesday December 31, 1980/Rules and Regulations, p. 86818).

Title IV-E provides for Federal payment of 50 percent of the cost of the proper and efficient administration of the State plan for foster care and for 75 percent of the cost of training for persons employed or preparing for employment by the agency administering the plan. Maintenance costs for eligible foster care children are matched at a rate which varies between 50 and 75 percent. Title IV-E established a separate category of funds to assist the States in subsidizing the adoption of special needs children.

The legislation also amended title IV-B of the Social Security Act which authorized funds for child welfare services. Under the

new provisions, States which wished to receive more than a minimal level of IV-B funding were required to establish new case review systems, case planning designed to achieve placement of foster care children in the least restrictive settings, administrative or court review of the child's situation every 6 months, and dispositional review by a court no later than 18 months after placement.

The legislation included a complex set of interrelated provisions aimed at lessening the incentives for long term foster care and at encouraging and facilitating adoption, particularly for special needs children. State foster care plans were required to provide for coordination between title IV-E foster care and adoption assistance, title IV-B child welfare services and title XX social services. Previously, foster care had been funded on an open-ended basis as part of the AFDC program. The new title IV-E foster care funds were to be capped, while funding of the new adoption assistance program was to be an open-ended entitlement. If a State spent more than the cap on foster care, it would have to absorb the difference. If a State spent less on foster care than the cap, it could transfer the difference to title IV-B, where it could be used in a less restrictive manner.

The foster care cap was to be imposed only when title IV-B child welfare funding reached a certain trigger level (FY 1981 $163.55 million; FY 1982 $220 million; and FYs 1983, 1984 and 1985, $266 million). Only in FY 1981 was the trigger amount appropriated. Therefore, the title IV-E foster care program has operated as an entitlement program in all but 1 year since its inception.

With the failure of the cap on total IV-E reimbursement, some States found it advantageous to obtain title IV-E eligibility for as many foster care children as possible and to also document every possible eligible administrative and training dollar. In the absence of the cap, the amount which they receive over the hypothetical ceiling for foster care more than compensates for the loss of IV-B flexibility which would be gained from transfer. But there are a variety of factors that go into a State's decision on whether or not to transfer funds. Simple income maximization is not always the rule.

Table 1 below presents selected national statistics on the title IV-E foster care program for FY 1981 through FY 1985. (Tables 1 to 4 in Appendix A present data on individual States and the District of Columbia over the same time period.) Between FY 1981 and FY 1985, the number of children served rose about 5 percent--from 102,991 to 108,193. The total Federal share of administrative and training rose by 438 percent--from $30.4 million to $163.4 million. The ratio of the Federal share administrative and training costs to maintenance cost rose 346 percent--from .11 to .49. In FY 1985, five States (Arizona,

Maryland, Missouri, Washington and West Virginia) had claims for administrative and training cost greater than for maintenance.

Table 1

Federal Expenditures for Title IV-E Foster Care Administrative, Training and Maintenance Costs, Average Monthly Number of Children Served and Percent Changes - Fiscal Years 1981-1985.

	FISCAL YEAR					PERCENT CHANGE 1981-1985
	1981	1982	1983	1984	1985	
FEDERAL SHARE (FS) TITLE IV-E ADMINISTRATIVE AND TRAINING COSTS ($ MILLION)	$30.4	$72.6	$117.9	$147.5	$163.4	+437.5%
FEDERAL SHARE (FS) TITLE IV-E FOSTER CARE MAINTENANCE COSTS ($ MILLION)	$278.4	$301.2	$276.9	$297.8	$333.6	+19.8%
TOTAL	$308.8	$373.8	$394.8	$445.3	$497.0	+60.9%
AVERAGE MONTHLY NUMBER OF CHILDREN SERVED	102,991	100,200	98,727	100,787	108,193	+5.1%
AVERAGE FS ADMINISTRATION AND TRAINING PER CHILD	$295	$725	$1,194	$1,463	$1,510	+411.9%
AVERAGE FS MAINTENANCE PER CHILD	$2,703	$3,006	$2,805	$2,955	$3,083	+14.5%
(ADMINISTRATION AND TRAINING)/ MAINTENANCE	.11	.24	.43	.50	.49	+345.5%

Congress did not anticipate that administrative costs would ever reach the levels that have been attained. The Conference Report made no reference to administrative costs per se, implying that inclusion of these expenses was noncontroversial. One respondent contacted, who was familiar with the legislative history, recalled that when the legislation passed it was estimated that foster care administrative cost would be less than 10 percent of maintenance, as compared to the 49 percent it reached in 1985.

The language of the legislation opened the door for States to make claims beyond these minimal expectations. The Act made reference to allowing payments for administrative and training costs in amounts "found necessary by the Secretary for the proper and efficient administration of the State plan" with no definition (except for training) as to what would actually be eligible. However, the requirements for the State plan included in Section 471(a) of the Act and the definitions in Section 475 incorporate a long list of required procedures and safeguards that were seen as necessary for reform of the foster care program.

The regulations further provided a listing of allowable administrative costs including: referral to services; preparation for and participation in judicial determinations; placement of the child; development of a case plan; case reviews; case management and supervision; recruitment and licensing of foster homes and institutions; rate setting; and a proportional share of agency overhead. The list of specific activities which may not be claimed as part of administrative costs is much shorter and includes "social services provided to the child and the child's family or foster family which provide counseling or treatment to ameliorate or remedy personal problems, behaviors or home conditions."

II. FINDINGS AND ANALYSIS

Overview

Some analysts of the foster care program cite the basic numbers and statistics on administrative cost as if they provide prima facie evidence that the unanticipated expenditures are per se inappropriate. Typical of these arguments is the position that, if State X can run its foster care program for a per unit administrative and training cost of 25 or 50 percent of State Y's, then (1) State X is more efficient or (2) State Y is charging the Federal Government the cost of providing uncovered activities and/or serving ineligible children. When a State spends 50 cents or more on administration for every dollar it pays out in maintenance, it is argued that the bureaucracy must be taking more than its fair share. If the administrative costs were less, there would be more money for services, food, shelter and clothing for the needy child. Questions are asked regarding why in 1984 the average Federal share of foster care administrative and training cost per child was $1,463 as opposed to $94 per recipient in AFDC.

In order to deal with these kinds of issues, it is necessary to first examine how the indicator numbers can and should be used.

Then such questions as relative State efficiency, inappropriate charges to the Federal Government, and OHDS efforts at cost containment can be considered.

Review of the Indicators

An examination of four basic numbers, often used as indicators of State foster care performance over time, illustrates why to date it has been difficult to do any systematic statistical analysis of the program. These are: (1) Federal share of IV-E foster care administrative and training costs; (2) Federal share of IV-E foster care maintenance costs; (3) average number of IV-E foster care children per month; and (4) Federal share of administration and training cost per IV-E child.

Analysts have looked at these numbers and rates at a particular point in time, the rate of change over time and the variation among States at a point in time. Some studies have also tried to measure through the use of correlation coefficients and regression analysis, the relationship between these variables and a variety of demographic, organizational, and quality of output variables. Such studies were designed to identify statistically significant relationships which would be interpreted as determinants of cost.

The most serious difficulty with using these variables as program performance indicators is that the Federal share of title IV-E administrative costs only represents the charges to the Federal Government and not the actual cost of running these programs. Both State and Federal respondents in this study agreed that States vary widely in their ability to document the costs eligible for IV-E administrative match. This includes both the capacity to isolate all eligible expenses and also the ability to identify every child who is IV-E eligible. When the proportion of children identified as IV-E eligible is low, total IV-E administrative costs are held down. This is because the ratio of IV-E to non-IV-E foster care children is often used to allocate some indirect costs and other cost pools.

In addition, the degree to which a State claim includes all eligible administrative costs would vary over time, with a greater percentage included in the later years. This is because it took time for some States to develop the cost allocation systems required by the legislation. Also, the States (like Congress) did not know how expensive it was or would be to provide the protective and planning services required and now paid for under the legislation.

The respondents indicated that States vary considerably in their strategies for claiming costs and in their perceptions regarding the need for, or the advantages of, maximizing their Federal reimbursement. The representative of one State indicated clearly

that she knew they had greatly underclaimed both administrative and training costs, as well as maintenance, in order to have funds left over to transfer to title IV-B. For them it was easier to get their counties to pick up the unmatched cost than to get the State legislature to appropriate additional funds for child welfare services. The respondent indicated that when the State becomes responsible for all foster care costs, the percent that are claimed will increase. In another State where counties are also required to pay some of the foster care costs, the State has less incentive to do the detail work that would result in full reimbursement. In this State, counties have at least three options on how to claim their local costs for reimbursement. The respondent indicated that for some officials simplicity was more important than efficiency.

It appears that in States where the financial management function is furthest removed from program staff, and extra funding resulting from efficient collections goes to the general revenue fund, the program people are less willing to push professional staff to do the detailed record keeping necessary for income maximization. In addition, where the State financial management staff are organizationally distant from the program staff, they may see greater advantage to operating an audit-proof, noncontroversial cost allocation system rather than getting back every Federal dollar.

Other States in the sample make a strong effort to capture every possible Federal dollar. One respondent was forthright in his assertion that the capping of title XX and the funding of title IV-B at levels which do not keep up with inflation, required his State to get additional Federal funds from wherever possible. This State and others in the sample have used a national consultant who has taught them to establish sophisticated random moment sampling systems for capturing IV-E administrative and training costs and other methods for identifying an increased percentage of foster care children as IV-E eligible.

Both the consultant and some State representatives indicated that it was more difficult to increase the percentage of IV-E children than to identify other eligible costs. This is because the social service staff see this kind of activity as taking away time that should be devoted to work on the substantive aspects of a case. In addition, several respondents indicated that parents of potential foster care children have little incentive to cooperate in IV-E eligibility determination. This is because: (1) such cooperation may increase the probability of a child's removal from the home; (2) parents get no direct benefit from cooperation like they would when providing information in order to collect AFDC and Medicaid; and (3) there is already likely to be an adversarial relationship between the State agency and the parents, simply on the basis of the State's intervention into the life of the family to protect the child.

Given the differences in what States claim for administration and how eligibility determinations are made, it is inappropriate to make either between or within time period comparisons of the States' performance based on the basic numbers alone. There simply is no commonly defined dependent variable (administrative cost) against which to plot various supposed causal events or circumstances. Therefore, it is not surprising that neither the Maximums studies (contracted for by ASPE) nor the internal regression analyses done by OHDS show any statistically significant relationships between the factors they studied and the Federal share of administrative and training costs. This is because the explanatory models which they proposed did not include factors related to the determinants of the claims and charges, or the strategies of claiming.

In addition, we do not know whether the percent changes in Federal share of administrative cost over time - for an individual State or for the nation - are due to changes in the percent of cost actually claimed, in resources used, or both. This is important because changes in percent of cost claimed raise questions about potential cost shifting from the States to the Federal Government, while changes in resources used have implications for efficiency.

These problems are further compounded when the Federal share of administrative or maintenance costs is corrected for the number of IV-E children served, because the number of IV-E children does not reflect the same phenomenon in each State due to the differences in the efficiency of the eligibility determination process. It was reported that even where States are working to maximize both the number of children found eligible as well as administrative costs identified, improving eligibility determination systems takes much longer than implementing a new cost allocation system. Also, the number of IV-E children is usually the average number of children served monthly. It is possible that this figure masks differences in administrative costs that may be associated with longer or shorter length of stay in foster care.

In summary, some data are available on the charges to the Federal Government for the administrative and training cost of the IV-E foster care program. But there are no accurate figures on the actual administrative costs. These charge data are further complicated because disputes continue between the States and OHDS over the amount of administrative costs actually owed and paid to a State for a particular year. Given the problems with the data, it is impossible to make systematic judgments about the determinants of administrative cost, the reasons for variation among States within a particular time period, or the rate of growth over time. This is not to say that the costs in particular States or the overall rate of growth of these costs is

fully acceptable. But in the absence of common cost determination or allocation methodologies that can be translated into a set of common categories, the information about these events is better determined directly from individual case studies and indirectly from reviewing secondary studies.

Using a variation of the case study and indirect approach, this inspection focused on four general topics: (1) the transfer of State costs to the Federal Government; (2) the alleged inefficiency of States in running the foster care program; (3) OHDS handling of administrative costs; and (4) legislative approaches to cost containment.

Transfer of Costs to the Federal Government

Some OHDS officials have asserted that a growing number of States are transferring costs to the Federal Government which they themselves should be paying. In testimony before the Select Committee on Children, Youth and Families, U.S. House of Representatives on April 22, 1987, the Commissioner, Administration for Children, Youth and Families, OHDS stated that:

> "It appears that States are finding ways to refinance existing services through these entitlements and that the growth in administrative cost does not reflect increases in services or improved management."

In addition, concerns were raised about the impact on administrative cost of several consultants that are working with the States to improve systems for documenting these expenses and counting clients eligible for services.

In response to these concerns and in order to facilitate broader objectives of cost containment, OHDS has tried to tighten the program guidelines which define eligible administrative costs. At various times OHDS has proposed legislation which would limit Federal participation in administrative cost to an amount not greater than 50 percent of the Federal share of maintenance costs or which would make administrative and training costs for foster care and adoption assistance payable under title IV-B.

It is important to note that OHDS has not documented that States are systematically transferring ineligible costs to the Federal Government. Seven studies of foster care administrative cost completed by the Financial Operations Review Branch (FORB), OHDS, did identify some miscellaneous problems. But there was no evidence found to demonstrate patterns of abuse. When OIG's Office of Audit (OA) did an audit of foster care administrative costs in Missouri (where claimed administrative costs had risen precipitously) they found no serious problems of State violations of Federal regulations or guidelines.

The OHDS has also presented no information to document how the consultant recommendations violate the regulations. One respondent with responsibilities relating to cost allocation, stated that his office had not found major technical difficulties with the random moment studies being designed by the consultants and implemented by the States. Rather, he explained, the major problem needing correction appears to be one of eligible cost definitions which are unclear and too broad.

The OHDS has tried through program guidelines to limit the payout of funds for administrative costs. The most salient attempt was in November 1985, when it issued Policy Announcement 85-01 (PA-ACYF-85-01) which held that:

> "Allowable costs related to foster care may include the determination of eligibility, preparation for placement, placement and referral costs before a child is placed in foster care, but only for children actually placed in foster care and determined eligible for Title IV-E.... Referral to services...does not include investigations or physical or mental evaluations.... Since those children with their families or otherwise permanently placed out of foster care are no longer in foster care, administrative costs for services or other activities related to the follow-up or other permanent placement of children no longer in Title IV-E foster care are not allowable."

Missouri Decision of the Departmental Grant Appeals Board

In 1985, the Region VII HHS Division of Cost Allocation (DCA) turned down an amendment to the IV-E CAP submitted by the State of Missouri. This amendment would have authorized reimbursement for administrative costs for all children who were foster care candidates and paid for the eligibility determination of children found not to be IV-E eligible. Missouri appealed this rejection to the Departmental Grant Appeals Board and was joined by two other States which provided additional information.

On March 2, 1987, the Board issued a decision (Missouri Department of Social Services, Docket No. 85-209, Decision No. 844) which upheld Missouri's position on every issue but one (regarding a specific definition of a time study code). The OHDS is responsible for interpreting the decision for programmatic purposes. (As of September 1987, OHDS has not issued to the States a policy memorandum which clarifies the meaning of this decision). However, the major issues and findings can be summarized as follows (see Appendix C for the full text of this decision):

- Payments of administrative costs for candidates who do not become IV-E eligible. In an amendment to its CAP, the State sought to allocate for IV-E payment the cost of services incurred before placement, regardless of whether the child was placed in foster care or determined to be IV-E eligible. Included were the costs of such services as plan development, court participation and referral to services. They also wanted IV-E payment when these services were provided to children after they had left foster care.

  The Board held that these services are included in the steps required of the State if a child is to be eligible for IV-E maintenance. Also, a goal of the program is to keep children out of foster care and denial would serve to work against this objective. These costs were allowed without restriction. Children previously in foster care were held to have the same preplacement rights as other children, and the costs of required services to them were also eligible for payment.

- Payment for negative eligibility determinations. The Board agreed with the State that the costs of negative eligibility determinations were also required and therefore necessary for the administration of the title IV-E program. Therefore, such costs were ruled eligible for participation. The Board stated that if negative eligibility determinations were not found to be eligible, the State would have an incentive to make only positive determinations. Further, it argued that the cost of negative determinations are eligible for participation under Medicaid and AFDC and that there was no reason why foster care should be handled differently.

- Reasonable cost arguments. In rejecting the State CAP amendments, the Agency argued that acceptance would result in incurring unreasonable costs within the context of the IV-E program. In its submission to the Board, the Agency theorized that the purpose of the CAP amendment was to shift to title IV-E costs that should have been paid for under title IV-B or XX. It called this "a thinly veiled effort to bleed the title IV-E program for money that should more appropriately be paid by the State." The Board also rejected this argument and held that so long as the cost of preplacement services and negative eligibility determinations are authorized by statute and regulations, they could not be rejected as eligible costs simply because they resulted in an increase of program costs; i.e., the agency could not establish its own hypothetical ceiling.

The full implications of this decision have yet to be determined. Some persons contacted as part of this inspection maintain that the Board's references to the applicable

regulations, as well as to the legislation, imply that the impact of this decision could be lessened by regulatory action alone. Others have maintained that the requirements in the Act relating to the State plan are of such basic importance to the reform aspects of the foster care program that it would be impossible, as well as illegal, to limit eligible costs more narrowly than the regulations (as currently interpreted) do. At least one OHDS regional office has withdrawn objections to a cost allocation plan that was in ways similar to that submitted by Missouri.

Efficient Operation of the Program

The legislation allows Federal participation in the administrative costs necessary for the efficient operation of the foster care program. The OHDS has responsibility for ensuring their programs are operated efficiently. In order to measure the relative efficiency of a particular State or local foster care program, it would be necessary to: (1) identify a common set of desired outcomes; (2) define a set of functions or activities necessary to produce these outcomes; (3) establish the cost of these activities; and (4) compare States. This assumes, of course, that there is a common set of raw materials (children and their families) that is being transformed into an outcome or product.

To date, these conditions have not been met by OHDS. In the absence of common cost figures and outcome measures, some analysts tend to make comparisons between the foster care program and the administrative cost of running such programs as AFDC, Food Stamps and/or Medicaid. They also ask why in some cases it should cost more for administration and training in foster care than it does for the basics of maintenance - food, shelter, clothing and other incidentals.

The major point here is that the activities included in foster care administration and training costs are not fully comparable to those for AFDC, Food Stamps and Medicaid. In the "Program Inspection on AFDC, Medicaid and Food Stamp Administrative Costs," it was found that AFDC administrative costs essentially include: eligibility determination, redetermination, check issuance, quality assurance, a share of administrative overhead and a little for employment efforts. For the Food Stamp program, change "check" to "voucher." For Medicaid add the expense of paying vendor claims and managing a variety of cost containment efforts, including the establishment of alternative delivery systems and the management of long term care. We believe that States capture and claim most of the cost of running these programs. Because they have been in operation for some time, increases from year to year reflect actual changes in cost or effort at the State or local level.

Foster care administrative costs include a variety of activities related to case management and planning that go far beyond the issuance of a check to the foster parent or the group home. In a typical State, there are a variety of labor-intensive, professional activities that must be done to protect the welfare of the child as well as the rights of the natural parents. These would include such activities related to:

- Child Welfare - Title IV-E Eligibility Determination. This includes: (1) collecting and verifying information from family or others which is used in the determination; e.g., income, AFDC, parental deprivation, resources, Social Security numbers, birth certificates; (2) filling out and processing associated eligibility forms; (3) redetermining eligibility every 6 months; and (4) preparing for and participating in fair hearings and appeals.

- Placement and Judicial Determination. This includes: (1) preparing and supporting a petition to seek custody of a child; (2) developing case and comprehensive reunification plans; (3) working with parents to develop voluntary placement agreements; (4) working with foster parents to prepare them for receiving a child; (5) court appearances where the status of a child in custody is being reviewed; and (6) completing paperwork and telephone calls related to placement or judicial activity.

- Child Welfare - Service Administrative - Children in Custody. This includes: (1) referral to services; (2) development of the case plan; (3) case and administrative reviews; (4) case management and supervision; (5) recruitment, approval and training of foster, adoptive, and other substitute care families; (6) case conferences and permanency planning meetings; (7) investigation, evaluation, and assessment of the child and family's condition; (8) arranging for the provision of preventive or protective services; and (9) crisis intervention activity.

These kinds of activities constitute the basic service functions (apart from direct therapy or medical services) necessary to operate a foster care program that meets the needs of the children and the intent of the legislation. The administrative cost reviews conducted by OHDS show that 75 to 80 percent of all foster care administrative costs claimed in the States reviewed were generated at the county or local level in these type of labor-intensive activities.

The OHDS Handling of Administrative Cost Issues

Each State is required to develop a CAP which establishes the system for identifying the costs eligible for participation by HHS programs. The plan covers many programs besides foster

care, including AFDC, Medicaid and Food Stamps. Foster care administrative and training costs are quite small when compared to the costs of running these larger programs. In FY 1984 the total Federal share of foster care administrative and training costs was $147.5 million as compared with $2.685 billion for AFDC, Food Stamps and Medicaid. This relative difference may in part explain why, to date, less attention has been devoted to foster care than to these other programs.

In the HHS regional offices, DCA has the responsibility for approving the CAP with input from the OPDIVs which comment on the applicability of the methodology in the plans to the specific regulations and guidelines of their individual programs. This joint administration of the CAP has its inherent weakness, since the people with detailed program knowledge do not deal with interagency issues, and DCA, which does, doesn't know the program details. Approval of the plan is essentially approval of a methodology, while for the most part it is up to the OPDIVs to audit or monitor the implementation of the plan. If there are implementation issues that cut across agency lines, these can go unattended. Traditionally, the States have been given considerable leeway to establish their own accounting and financial systems and within States there are different structures of county and local administration. Therefore, it is quite difficult to compare expenditures among States.

From the field discussions with OHDS and DCA, there emerged evidence of a widely varying pattern of relationships between them. In some regions, both program and finance people from OHDS are substantially involved in review of the CAP, while in some, only the financial staff are involved. Some regions have one financial person dedicated to understanding foster care issues and in others several people have State-focused responsibilities for foster care and other OHDS programs. In only one case was it indicated that either OHDS or DCA staff had more than a perfunctory knowledge of the statistics necessary to evaluate the sampling plans which some States have submitted as part of their random moment studies.

There also appears to be a differing set of relationships between OHDS and the States, both among and within individual regions. In one region visited, financial and program people work closely together as a team to help the States get every possible legitimate administrative dollar from the Government, and not a cent more. In another region, State personnel reported that their OHDS financial officer had threatened them with a never-ending series of audits and checks across all aspects of the foster care and adoption assistance programs if they went forward with a CAP that stretched the limits of the interpretation of the regulations. In another region, an OHDS financial officer indicated that he had been criticized by Headquarters personnel for pointing out to the States how they

could legitimately increase their reimbursement. "You're here to save money, not to show people how to spend it." In most cases the relationship between OHDS and the States was described more or less as cautiously neutral, with States receiving fairly good support from OHDS when the regional office people could answer their questions.

Both the States and the OHDS regional offices continue to have questions about exactly what administrative costs are eligible for reimbursement. The OHDS Headquarters has been thought to be tougher on cost containment, but there continue to be disagreements over what is appropriate policy. The Missouri decision further widens these concerns.

At the time of the field work, we found that OHDS had no one consistent approach to controlling and managing foster care administrative costs. In the regional office, the most common position is to attempt to determine whether a particular State expenditure is legal or eligible under the regulations or program guidelines. With some exceptions, there did not appear to be any significant conceptual interest at the regional level in how one evaluates State expenditures in relation to program outcomes.

The methodology developed by OHDS for the administrative cost reviews provides for a somewhat broader and more detailed look at State practices in claiming these cost and included some questions about the reasons for increase and variation. But the reports which were reviewed as part of this inspection tended to stress compliance with existing interpretations of the regulations, with little evaluation of patterns of causation.

In OHDS Headquarters, there was a strong grouping of opinion which explicitly stated that administrative costs are growing too quickly, that the variation between States is unreasonable and that, for all practical purposes, many States are violating the spirit if not technical requirement of the law. Some persons argued: If the Missouri decision says the law and regulations authorize broader expenditures, then either the decision is wrong or the regulations and/or law should be changed. Again, there was no evidence presented by these people regarding the relationship between administrative cost and program outcomes. There were also indications that there was little input sought from program or policy staff on decisions to push cost containment efforts that might have the effect of constraining State program efforts.

The OHDS is aware of many of the issues which have been raised in this inspection report regarding both the nature of foster care administrative and training costs and the difficulties of managing them. The ongoing series of administrative cost reviews, which are being jointly conducted by OHDS Headquarters and regional office staff, has the potential to gather much

information on State practices which would be useful in both clarifying and rationalizing policy. During the time this inspection was being conducted, OHDS established a task force to advise the Assistant Secretary on the questions raised by OMB as part of the budget passbook in 1986. The report of that task force contains a number of recommendations that, if adopted, would be useful in improving the management of the foster care program. In May 1987, a structural realignment of foster care staff was being conducted to both consolidate and better coordinate the management operations of this program. Although the final structure was not available to OIG at the time the field work for this study was completed, there were preliminary indicators that it should help to achieve the desired outcomes sought by the task force.

Legislative Approaches to Cost Containment

In the early stages of this inspection, consideration was given to including title IV-E foster care administrative and training costs in the OIG proposal to fund AFDC, Food Stamps and Medicaid administrative costs on a prospective basis. Eventually, this was rejected. Under the prospective payment proposal, States would receive a combined amount per recipient for all three programs, derived from the weighted national average cost per recipient, corrected for inflation and relative State and local government labor costs. Although it was recognized that the overall difficulties of running an effective and efficient cost allocation program apply to foster care as well as AFDC, Food Stamps and Medicaid, there are a number of nonparallel aspects of these four programs. For AFDC, Medicaid and Food Stamps, the States claim almost all allowable costs. Therefore, the national average administrative cost per recipient represents the actual average cost of running these programs. As indicated above, the variation in foster care administrative costs actually represents a variation in charges to the Federal Government. Also, these costs include a much broader set of services which may be less uniform among States.

During the discussions with the State and Federal respondents, questions were raised about the desirability and/or acceptability of various other proposals to control foster care administrative costs through legislative change. Methodologically, these are the most difficult kinds of issues to deal with as part of an open-ended, but time-limited, discussion. This is because few respondents have more than a general knowledge of these proposals or have access to the detailed numbers that would indicate exactly how a particular State would fare. Also, some persons with a detailed knowledge of a State's day-to-day operations were reluctant to comment on larger policy issues that might affect future State revenues. As a result, more information was collected on generic concerns than on the positive and negative aspects of proposal details.

State respondents did not have any real sense of urgency about the control of foster care administrative costs. In general, they believe that they are charging only eligible costs to title IV-E and that under the current rules the Federal Government is obligated to pay its full share, regardless of total cost. It was not surprising to learn that the lower the per recipient administrative cost in a State, the more likely its respondents were to accept a cap somewhere above their current level of expenditures. But since even the lowest cost States in the sample were anticipating some sort of increase, everyone appeared cautious about accepting limitations that were perceived to punish some States and reward none.

One senior respondent from a higher cost State rejected entirely the whole concept of cost containment, arguing that if the inspection discussions went forward at that level, he would be reduced to quibbling about the details of a proposal that would hurt his organization no matter what change was accepted. He argued that neither title XX nor title IV-B funds have kept up with inflation and that the ratio of State to Federal expenditures for social welfare services had risen constantly over the last several years. Any reduction in Federal funding was perceived as another transfer of costs to the States. He and others stated that PL 96-272 was a complex piece of legislation which required the States to carry out myriad specific actions and services to children in order to get maintenance payments. Their response can in part be summarized: If the Feds require, then the Feds should pay their fair share.

There seemed to be agreement among State respondents that any new legislative proposal should open up discussion of the program requirements. Cost containment, if any, should have some sort of incentive attached to it. Several persons would be interested in a block grant for all foster care, adoption assistance and child welfare activities if it could be tied to some type of self-correcting indicator such as number of children served and an inflation index. They would be willing to trade flexibility and reduction in oversight for some limitation in future growth.

It was argued that if there is a discussion of new funding methods for foster care and adoption assistance, several of the basic assumptions about the program should be reviewed. Among the issues to be discussed are: Why do we pay only for the maintenance of poor children when child abuse and neglect goes across class and income lines? How can we better tie together the efforts supported under titles XX, IV-B and IV-E?

III. RECOMMENDATIONS

The recommendations which follow are divided into two groupings: (1) Short term actions aimed at improving the ability of OHDS to monitor foster care administrative and training costs and to provide accurate guidance and effective assistance to States as they prepare to document and submit claims for these expenses. (2) Long term actions which would enable OHDS to better participate in the larger discussion of the Federal role in meeting the needs of foster care children and in promoting child welfare issues in general.

Short Term Recommended Actions

The interactive incentive system of PL 96-272 has not fully functioned as anticipated. The unanticipated increase in administrative costs, coupled with the perceived inability of OHDS to get full administrative control of the situation has led to calls for reductions in funding which many not have always taken into consideration the impact of these cuts on program activities. The recommendations which follow are aimed at assisting OHDS in taking greater control of their program and at providing a more stable environment within which States can predict and manage the resources necessary to serve their client population.

It is recognized that many of the problems that OHDS has had to face are similar to those dealt with by the Health Care Financing Administration, Family Support Administration, and the Department of Agriculture's Food and Nutrition Service over the years with only limited success. In various forums, OHDS has recognized the seriousness of the issues which it must confront and is in the midst of a structural realignment for improving the management of title IV-E programs. Some of the short term recommendations which follow may have already been anticipated and begun by OHDS. If so, it is hoped that this analysis will provide additional logic and support for these activities. The OHDS should:

1. Seek from the Office of General Counsel (OGC) immediate clarification of the meaning of the Missouri decision of the Grant Appeals Board. It is of particular importance to determine which of the findings are derived from the statute as opposed to regulations. This would give a better sense of which kinds of services and activities funded as administrative and training must be prorated on the basis of the percentage of foster care children eligible for title IV-E maintenance.

2. Take the interpretation of the Missouri decision and translate it into a policy announcement which details the

implications for State cost allocation plans and claiming methodologies.

3. Conduct a systematic analysis of cost allocation plans, sampling methodologies and eligibility determination systems used by States that have employed the services of consultants who are alleged to unacceptably stretch the interpretation of legislation and regulations. States should be informed of both the negative and positive results of this study.

4. Conduct a survey of States to determine the anticipated levels of claims for foster care administrative and training costs over the next 2 or 3 years and to identify the reasons why States anticipate any major shifts up or down. This would give a more accurate grasp of the magnitude of the short term demand for funds for administrative costs.

5. Develop a national protocol for use in the routine evaluation of foster care cost allocation plans. Since accurate claims for foster care administrative costs are surrogate measures for program effort, both program and financial staff should be involved in the reviews. This would improve the ability to track the level of effort involved in the provision of foster care and its relationship to other child welfare services.

6. Revise the methodology used for conducting retrospective administrative cost reviews to incorporate any revised standards of participation in administrative costs. The questions addressed as part of these reviews should be expanded to include a broader look at the relationship between cost and program efforts. The methodology for these reviews should be coordinated with the prospective review of the CAPs.

Long Term Recommended Actions

Although it will be both necessary and important for OHDS to achieve short term gains by clarifying reimbursement policies and rationalizing the system for monitoring and paying foster care administrative costs, there remain broader, long term policy questions to be solved. The most crucial and difficult issue that must be addressed is how to reconcile competing valid demands for reduction in the Department's budget and the development and operation of a unified Federal child welfare program. In its simplest terms, the questions can be phrased: What kind of child welfare program does this country want? What should be the Federal role? How much are we willing to pay for it?

The OHDS should be prepared to lead the Department's consideration of the issues. This will require an interaction between persons with both program and financial knowledge. To deal with either the cost or the service issue while ignoring, or worse, misrepresenting the subtleties of the other, will be to end up with solutions that are incomplete and/or unacceptable to one or another of the constituent groups involved in the larger discussion. To this end, OHDS should:

1. Ensure that any changes in regulations aimed at controlling administrative cost take into consideration the potential impact on State foster care program operations.

2. Reevaluate the overall effectiveness of PL 96-272 in achieving the goals of reforming the foster care delivery system and encouraging adoption. Included should be an examination of the:

   - o breakdown of the incentive structure to promote adoption and improve child welfare services that was included in the legislation;
   - o continued validity of funding some child welfare system services on an income related basis and funding others for all children;
   - o advantages that might be achieved from Federal participation in the funding of foster care for all children at a reduced rate of participation; and
   - o elimination of artificial distinctions between administrative and maintenance costs.

OHDS Response and Recommended Follow-up

The full text of OHDS comments on the draft of this inspection report are included as Appendix B. In these remarks OHDS states that it"... believes the report to be a valuable addition to the body of knowledge about administrative costs in the Title IV-E program and the [the inspection]... makes observations that [OHDS has] tried to communicate about the complexity of the legislation and State administration..."

The OHDS indicated, however, that the impact of the Grant Appeals Board findings in the Missouri appeal is over stated. As of September 1987, OHDS has still not issued an interpretation of this decision. Therefore, it is difficult to fully determine how our restatement and the OHDS interpretation of the decision would differ. The full text of the decision is included as Appendix C which the reader may examine to draw their own conclusions.

The OHDS comments also indicate that the report of OHDS opinion on cost transfer and the role of consultants is also inaccurate. These comments maintain that OHDS is only concerned that the "law allows States to transfer costs (and consultants to help them do it) and that those provisions of the law should be reconsidered." A review of the records of discussions with OHDS personnel in Headquarters and the regional offices, and with State officials, finds a wide spread perception that OHDS has considered the expanded State claims for administrative cost highly inappropriate, if not specifically illegal.

The response concludes: "We will seriously consider each of the recommendations as we continue our efforts to improve management of the title IV-E programs. We have already begun implementation of some, or parts of some, recommendations."

It is further recommended that OHDS develop a specific response to each of the recommendations listed above. An agenda and timetable should be included for those items with which OHDS agrees. In addition, there should be a discussion of the reason for rejecting the recommendations which OHDS chooses not to implement.

APPENDIX A

Table 1

Average number of title IV-E foster care children per month by State and the District of Columbia, 1981-1985.

	1981	1982	1983	1984	1985
Alabama	1516	1544	1528	1513	1521
Alaska	56	45	55	19	2
Arizona	618	455	584	507	476
Arkansas	395	370	406	395	455
California	16708	17520	16797	18197	21309
Colorado	529	559	707	1204	1804
Connecticut	775	795	1105	1100	1087
Delaware	273	249	272	295	337
Dist. of Col.	1882	1693	1806	1592	1186
Florida	1151	1194	1399	1954	1308
Georgia	1398	1218	1368	1602	1750
Hawaii	21	21	17	26	35
Idaho	199	171	162	156	166
Illinois	5528	5135	4672	4107	4206
Indiana	1676	1439	1464	1487	1368
Iowa	651	627	642	656	707
Kansas	1590	1328	1111	1046	1096
Kentucky	1286	1265	1145	1153	1587
Louisiana	1767	1547	1616	1980	2115
Maine	1145	1042	898	825	681
Maryland	2334	2108	1928	1805	1595
Massachusetts	561	1049	937	927	898
Michigan	5785	5862	5840	6082	6492
Minnesota	1699	1342	1802	1665	1738
Mississippi	879	835	780	750	761
Missouri	2098	1916	2174	1748	2076
Montana	250	259	382	357	311
Nebraska	599	652	623	635	743
Nevada	209	209	239	224	214
New Hampshire	484	474	488	467	469
New Jersey	1615	1464	1763	3320	3977
New Mexico	222	164	172	302	524
New York	20173	19607	18434	16481	17622
North Carolina	1715	1537	1433	1324	1425
North Dakota	335	342	350	280	262
Ohio	3930	3289	3625	4186	4156
Oklahoma	791	911	832	904	1003
Oregon	1314	1460	1457	1357	1238
Pennsylvania	5359	5300	5300	5213	6900
Rhode Island	429	400	519	781	348
South Carolina	527	449	606	845	862
South Dakota	400	432	362	282	281
Tennessee	1730	1493	1401	1135	1063
Texas	2661	2542	2590	2685	2814
Utah	229	194	252	295	258
Vermont	269	295	291	431	469
Virginia	2276	2136	1913	1984	1919
Washington	812	1021	1179	1203	1012
West Virginia	605	650	584	774	1039
Wisconsin	3898	3555	2674	2266	2435
Wyoming	39	36	43	65	93
TOTAL	102991	100200	98727	100787	108193

Table 2

Average $ Federal share of title IV-E foster care administrative and training costs per child, by State and the District of Columbia, 1981-1985.

	1981	1982	1983	1984	1985
Alabama	45	43	52	85	174
Alaska	0	0	0	0	0
Arizona	56	91	984	1839	2939
Arkansas	92	87	103	79	196
California	640	399	2120	2352	2284
Colorado	84	53	60	18	7
Connecticut	0	0	745	837	1053
Delaware	79	79	74	72	522
Dist. of Col.	93	969	453	1451	2331
Florida	96	110	105	93	472
Georgia	372	2440	2552	2182	2062
Hawaii	150	202	287	394	400
Idaho	125	131	101	126	174
Illinois	164	201	687	228	847
Indiana	79	15	46	111	194
Iowa	66	827	1064	1215	963
Kansas	96	297	484	658	678
Kentucky	40	29	70	59	13
Louisiana	242	493	632	2830	2496
Maine	11	57	1196	1304	1201
Maryland	124	85	88	89	2413
Massachusetts	130	73	2639	2436	2369
Michigan	817	1129	1325	1543	1586
Minnesota	187	365	708	1025	1289
Mississippi	50	82	100	106	109
Missouri	58	69	1218	2717	1728
Montana	0	1669	821	1215	1148
Nebraska	245	639	557	1483	1646
Nevada	255	80	102	108	121
New Hampshire	107	503	634	1028	1019
New Jersey	46	60	40	370	775
New Mexico	19	43	543	125	2341
New York	174	2037	2107	2441	2299
North Carolina	47	67	103	98	110
North Dakota	79	125	191	233	336
Ohio	265	131	90	93	86
Oklahoma	95	110	2342	1595	1225
Oregon	1085	1076	1422	1870	1847
Pennsylvania	373	434	562	736	650
Rhode Island	0	0	0	0	1101
South Carolina	92	113	159	317	791
South Dakota	176	91	45	55	47
Tennessee	33	52	44	62	28
Texas	75	111	165	2427	1028
Utah	200	338	870	1172	1645
Vermont	240	1414	2652	2265	2345
Virginia	166	177	252	277	236
Washington	425	1507	1499	1739	1849
West Virginia	33	6	1977	3846	4027
Wisconsin	444	488	985	1437	1416
Wyoming	0	0	0	0	0
Total	295	725	1194	1463	1510

Table 3

Average $ Federal share of title IV-E foster care maintenance costs per child, by State and the District of Columbia, 1981-1985.

	1981	1982	1983	1984	1985
Alabama	1093	1376	1381	1369	1506
Alaska	3963	10572	2529	4215	6000
Arizona	1271	2736	2156	2341	2605
Arkansas	1191	1130	1199	1315	1178
California	2746	2969	2978	3129	3281
Colorado	1406	1842	1559	1315	1392
Connecticut	1961	1900	1775	1823	1810
Delaware	1242	1270	1265	1353	1306
Dist. of Col.	3320	3686	3119	3042	3792
Florida	1361	1509	1650	1402	2092
Georgia	1333	1673	2488	2430	2406
Hawaii	932	1209	1185	1087	1286
Idaho	1354	1377	1448	1486	1060
Illinois	1209	1219	1160	1305	1379
Indiana	544	600	590	628	627
Iowa	1458	1454	1529	1588	1692
Kansas	2205	2143	2442	2644	2587
Kentucky	1196	998	1658	1842	2866
Louisiana	1729	3123	3666	2476	2878
Maine	1914	2051	1963	2292	2125
Maryland	1295	1321	1443	1605	2165
Massachusetts	4872	2701	3348	3088	2759
Michigan	2257	3193	3427	3936	4254
Minnesota	2585	2931	1978	2809	2891
Mississippi	1067	984	434	1190	1300
Missouri	965	1014	1159	1779	1471
Montana	3095	3195	2805	3067	3286
Nebraska	1984	2080	2084	2129	2236
Nevada	1821	1676	1496	1496	1607
New Hampshire	1206	1224	994	1565	1522
New Jersey	1165	1334	1728	1577	1597
New Mexico	476	1260	2143	1949	2441
New York	5221	5603	4945	5362	5207
North Carolina	1119	1165	1308	1286	1334
North Dakota	1881	2254	2443	2575	2786
Ohio	896	995	1225	1293	1672
Oklahoma	1472	1984	2769	2480	2201
Oregon	2510	2337	2490	2743	2762
Pennsylvania	5248	5900	4057	4864	4388
Rhode Island	2176	2480	1961	1593	2540
South Carolina	1057	1074	1131	1270	1398
South Dakota	1451	1694	1754	1800	1964
Tennessee	1129	1115	1129	1423	1563
Texas	2088	2098	2027	2352	2468
Utah	1793	1964	1599	1559	1926
Vermont	2259	2329	2714	2205	2516
Virginia	1145	1193	1292	1281	1393
Washington	1528	1583	1947	1885	1795
West Virginia	1830	2225	2348	3336	3198
Wisconsin	1972	2307	2605	3118	3313
Wyoming	1639	2205	2589	2158	1570
Total	2703	3006	2805	2955	3083

Table 4

Ratio, $ Federal share of title IV-E administrative and training costs/$ Federal share maintenance costs, by State and the District of Columbia, 1981-1985.

	1981	1982	1983	1984	1985
Alabama	0.04	0.03	0.04	0.06	0.12
Alaska	0.00	0.00	0.00	0.00	0.00
Arizona	0.04	0.03	0.46	0.79	1.13
Arkansas	0.08	0.08	0.09	0.06	0.17
California	0.23	0.13	0.71	0.75	0.70
Colorado	0.06	0.03	0.04	0.01	0.00
Connecticut	0.00	0.00	0.42	0.46	0.58
Delaware	0.06	0.06	0.06	0.05	0.40
Dist. of Col.	0.03	0.26	0.15	0.48	0.61
Florida	0.07	0.07	0.06	0.07	0.23
Georgia	0.28	1.46	1.03	0.90	0.86
Hawaii	0.16	0.17	0.24	0.36	0.31
Idaho	0.09	0.10	0.07	0.08	0.16
Illinois	0.14	0.16	0.59	0.17	0.61
Indiana	0.15	0.02	0.08	0.18	0.31
Iowa	0.05	0.57	0.70	0.77	0.57
Kansas	0.04	0.14	0.20	0.25	0.26
Kentucky	0.03	0.03	0.04	0.03	0.00
Louisiana	0.14	0.16	0.17	1.14	0.87
Maine	0.01	0.03	0.61	0.57	0.57
Maryland	0.10	0.06	0.06	0.06	1.11
Massachusetts	0.03	0.03	0.79	0.79	0.86
Michigan	0.36	0.35	0.39	0.39	0.37
Minnesota	0.07	0.12	0.36	0.36	0.45
Mississippi	0.05	0.08	0.23	0.09	0.08
Missouri	0.06	0.07	1.05	1.53	1.17
Montana	0.00	0.52	0.29	0.40	0.35
Nebraska	0.12	0.31	0.27	0.70	0.74
Nevada	0.14	0.05	0.07	0.07	0.08
New Hampshire	0.09	0.41	0.64	0.66	0.67
New Jersey	0.04	0.04	0.02	0.23	0.49
New Mexico	0.04	0.03	0.25	0.06	0.96
New York	0.03	0.36	0.43	0.46	0.44
North Carolina	0.04	0.06	0.08	0.08	0.08
North Dakota	0.04	0.06	0.08	0.09	0.12
Ohio	0.30	0.13	0.07	0.07	0.05
Oklahoma	0.06	0.06	0.85	0.64	0.56
Oregon	0.43	0.46	0.57	0.68	0.67
Pennsylvania	0.07	0.07	0.14	0.15	0.15
Rhode Island	0.00	0.00	0.00	0.00	0.43
South Carolina	0.09	0.11	0.14	0.25	0.57
South Dakota	0.12	0.05	0.03	0.03	0.02
Tennessee	0.03	0.05	0.04	0.04	0.02
Texas	0.04	0.05	0.08	1.03	0.42
Utah	0.11	0.17	0.54	0.75	0.85
Vermont	0.11	0.61	0.98	1.03	0.93
Virginia	0.14	0.15	0.19	0.22	0.17
Washington	0.28	0.95	0.77	0.92	1.03
West Virginia	0.02	0.00	0.84	1.15	1.26
Wisconsin	0.23	0.21	0.38	0.46	0.43
Wyoming	0.00	0.00	0.00	0.00	0.00
Total	0.11	0.24	0.43	0.50	0.49

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Human Development Service

Assistant Secretary
Washington DC 20201

SEP 16 1987

TO: Richard P. Kusserow
Inspector General

FROM: Acting Assistant Secretary
for Human Development Services

SUBJECT: OIG Report on Foster Care Administrative Costs

In general, the Office of Human Development Services (OHDS) believes the report to be a valuable addition to the body of knowledge about administrative costs in the Title IV-E program. It makes observations that we have tried to communicate to others about the complexity of the legislation and State administration of the foster care and adoption assistance programs. We, specifically, are pleased that the report confirms the following points:

- "The language of the legislation opened the door for States to make claims beyond these minimal expectations."

- With regard to some of the statistical indicators, "The most serious difficulty with using these variables as program performance indicators is that the Federal share of Title IV-E administrative costs only represents the charges to the Federal Government and not the actual cost of running these programs...the degree to which a State claim includes all eligible administrative costs would vary over time, with a greater percentage in the later years...States vary considerably in their strategies for claiming costs and in their perceptions regarding the need for, or the advantages of, maximizing their federal reimbursement."

- "These problems are further compounded when the Federal share of administrative or maintenance costs is corrected for the number of IV-E children served, because the numbe of IV-E children does not reflect the same phenomenon in each state..."

- "Given problems with the data, it is impossible to make systematic judgements about the determinants of administrative cost, the reasons for variation among States with a particular time period, or the rate of growth over time."

There are some sections of the report that we would revise as follows:

- In general, the impact of the Grant Appeals Board (GAB) findings on Missouri is overstated. Interpretation of the GAB decision for programmatic purposes should be left to OHDS and should not appear in an OIG review which may be construed by outsiders as a "Federal" interpretation. A simple restatement of the GAB decision would be more appropriate. (pages 10, 11, 12)

- We do not characterize the proposed organizational changes in the Administration for Children, Youth and Families as a major reorganization. We prefer to call it a structural realignment for improving the management of Title IV-E programs. (page 18)

- In regard to OHDS opinion on transfer of costs to the Federal government, the report is inaccurate in two instances:

  1. The language preceding the ACYF Commissioner's quote on page 9 implies that OHDS officials believe that States are doing something wrong in transferring costs to the Federal government.

  2. The same theme is repeated regarding consultants assisting States to "unfairly" claim unallowable costs.

  In both instances, the report misreads the OHDS complaint that the current law allows States to transfer costs (and consultants to help them do it) and that those provisions of law should be reconsidered.

- On page 3, the "12 months" should read "6 months" and the "24 months" should read "18 months."

We will seriously consider each of the recommendations as we continue our efforts to improve management of the Title IV-E programs. We have already begun implementation of some, or parts of some, recommendations.

Phil Hawkes

Phillip N. Hawkes

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Missouri Department of Social Services
Docket No. 85-209
Decision No. 844

DATE: March 2, 1987

DECISION

The Missouri Department of Social Services (DOSS, State) appealed the decision of the Regional Director, Region VII (Agency), of the Department of Health and Human Services affirming the disapproval by the Region VII Division of Cost Allocation (DCA) of the State's proposed amendment to its cost allocation plan (CAP) for services under Title IV-E of the Social Security Act (Act). The central issue raised by this appeal is whether the State can amend its CAP so as to claim certain activities performed by DOSS as administrative costs under the IV-E program. The Regional Director had found that an amendment authorizing reimbursement of these activities could not be approved because the activities were outside the scope of the IV-E program. In a related finding, the Regional Director concluded that definitions for time study codes used in the proposed amendment were inconsistent with Agency regulations.

For the reasons described below, we find that the disputed activities themselves, if properly defined by the State in its plan, are reimbursable under the IV-E program as administrative costs. The activities are proper and necessary administrative activities under the statute and regulations and indeed are specifically identified without qualification under the regulations as reimbursable administrative costs. We also find, however, that the Agency may require changes in the definitions for time study codes in the State's proposed amendment to ensure that the codes are consistent with the regulations and to ensure that they are as specific as necessary for correct implementation in the field.

In the course of this appeal the Board received submissions in support of the State's position from the Arkansas Department of Human Services, the Maryland Department of Human Resources and the West Virginia Department of Human Services. These state agencies (Intervenors) alleged that they had either submitted or were in the process of submitting CAP amendments similar in

whole or in part to those at issue here. The Board determined that these state agencies had a "clearly identifiable and substantial interest in the outcome of the dispute" and admitted their submissions into the record as intervenors in accord with 45 CFR 16.16(b). The Board gave the Agency the opportunity to respond to these submissions.

Statutory Background of the IV-E Program

The Child Welfare Services program has been a part of the Act since the Act's inception in 1935. In 1968 Congress transferred this program to Title IV-B of the Act (sections 420-425 of the Act). Historically, Title IV-B has provided federal grants to states to establish, extend, and strengthen child welfare services. The services are available to all qualified children, including the handicapped, homeless, neglected, and dependent.

The Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, was enacted on June 17, 1980. In addition to amending Title IV-B, this legislation established a new program, the Title IV-E program, Federal Payments for Foster Care and Adoption Assistance. The foster care component of the aid to families with dependent children (AFDC) program, which had been an integral part of the AFDC program under Title IV-A of the Act, was transferred to the new Title IV-E, effective October 1, 1982.

Title IV-E (42 U.S.C. §§670-676, sections 470-476 of the Act) had as its impetus the belief that the public child welfare system responsible for serving dependent and neglected children had become a holding system for children living away from their parents. Congress intended Title IV-E "to lessen the emphasis on foster care placement and to encourage greater efforts to find permanent homes for children either by making it possible for them to return to their own families or by placing them in adoptive homes." S. Rep. No. 336, 96th Cong., 1st Sess. 1 (1979), reprinted in 1980 U.S. CODE CONG. & AD. NEWS 1448, 1450.

Title IV-E enables each state to provide, in appropriate cases, foster care and adoption assistance for children who otherwise would be eligible for assistance under a state's approved Title IV-A plan (42 U.S.C. §601 et seq.) or, in the case of adoption assistance, would be eligible for benefits under the Supplemental Security Income program of Title XVI (42 U.S.C. §1381 et seq.). In order to carry out the provisions of Title IV-E, appropriations made available for that program are to be used

for making payments to those states which have submitted, and had approved by the DHHS Secretary, state plans under Title IV-E. 42 U.S.C. §671. Congress identified three separate categories of expenditures for which states are entitled to FFP under payment formulas set forth in 42 U.S.C. §674: foster care maintenance payments for children in foster care homes or child care institutions (42 U.S.C. §672); adoption assistance payments (42 U.S.C. §673); and payments "found necessary by the Secretary for the proper and efficient administration of the State plan . . ." 42 U.S.C. §674(a). The last category, expenditures for plan administration, is subdivided to cover the cost of training state personnel to administer the IV-E program and all other administrative expenditures. 42 U.S.C. §674(a)(3). 1/

The Agency's regulations implementing Title IV-E are codified at 45 CFR Part 1356 (1983).

The Cost Allocation Plan Process

A state participating in the various categorical programs under the Act, including Title IV-E, is required to make determinations as to the amount of commonly incurred expenditures, such as staff time, that are attributable to each program the state administers. A state is required to submit a plan for cost allocation to the Director, DCA, in the appropriate DHHS regional office. 45 CFR 95.507(a). This cost allocation plan is defined as "a narrative description of the procedures that the State agency will use in identifying, measuring, and allocating all State agency costs incurred in support of all programs administered by the State agency." 45 CFR 95.505. The CAP must contain sufficient information to permit the DCA Director to make an informed judgment on the correctness and fairness of the state's procedures for identifying, measuring, and allocating all costs to each of the programs administered by the state agency. 45 CFR 95.507(a)(4).

1/ For foster care maintenance assistance payments and adoption assistance payments, each state with an approved plan is entitled to a payment equal to the federal medical assistance percentage (as defined in 42 U.S.C. §1396d(b)) of the amounts expended by the state. For staff training, 75% of a state's costs are reimbursed. For any remaining administrative expenditures, 50% of the costs are reimbursed.

Amendments to a CAP may be submitted to DCA (45 CFR 95.509), and, if DCA disapproves the amendment, a state may seek reconsideration of the DCA decision by the DHHS Regional Director. 45 CFR Part 75. A Regional Director's negative determination may be appealed to the Board. 45 CFR 75.6(c).

Factual Background

Pursuant to 42 U.S.C. §671, the State had an approved plan for the provision of Title IV-E services. On September 25, 1984, the State submitted to the Region VII DCA an amendment to its CAP then in effect. State Appeal File, Ex. A. The proposed CAP amendment took the form of a series of "time study codes" describing various administrative activities performed by Children's Services field workers of the Missouri Division of Family Services (DFS). Under the proposed amendment, the Children's Services workers would record the time spent on activities described by each code during a designated sampling period. These records would then become the basis for the State's allocation of costs among various programs. Code 3 of the proposed amendment concerned the provision of social services which would not be charged to Title IV-E. Code 4, entitled "Child Welfare Service Administration," listed examples of administrative costs which would be allocated to Title IV-E.

On May 29, 1985, the Director, DCA, rejected the proposed amendment and found that the definitions used for the time study codes charged to the IV-E program included unallowable social services which should be allocated to either the Title IV-B or Title XX (Social Services) programs. State Appeal File, Ex. B. On September 9, 1985, the Agency's Regional Director affirmed DCA's decision.

While the original CAP amendment was being reviewed by the Regional Director, the State submitted a revised CAP amendment to DCA. The DCA Director, on September 23, 1985, approved a version of the State's CAP with revised time study codes. The plan was given the same effective date as the effective date of the original amendment (July 1, 1984). The State, however, maintained, with its appeal to the Board, that the original CAP amendment should have been approved.

Issues in Dispute

The issues raised by the State in its appeal brief are as follows: 2/

-- whether administrative costs, such as those for plan development, judicial determinations and referrals, are allowable under Title IV-E if incurred for candidates for IV-E cash benefits who do not become recipients;

2/ In addition to its substantive arguments, the State contended that it was legally entitled to approval of its CAP amendment on procedural grounds. The State alleged that the Director, DCA, had failed to comply with the mandates of 45 CFR 95.511 (1983) and that, accordingly, the Director was estopped and prohibited from disapproving the CAP amendment. The State alleged that it had submitted the CAP amendment on September 25, 1984, and the DCA did not respond until December 20, 1984 when DCA indicated that the State's information concerning the amendment was "incomplete." The Agency disputed the State's interpretation of 45 CFR 95.511(a) and denied that the absence of the written notification constitutes approval of an amendment.

In addition to employing the Board's procedures to reverse the Agency's decision, the State sought a preliminary and permanent injunction in a United States district court requiring DHHS to take the necessary administrative action to release funds claimed by the State for fiscal years 1983, 1984, and 1985 pending the outcome of its appeal before the Board. The District Court ruled that DCA's failure to respond in writing within 60 days did not constitute "deemed approval" of the proposed plan amendment, and further refused to adopt the State's suggestion that section 95.511 could be interpreted as providing for such a "deemed approval." State of Missouri v. Bowen, No. 85-4592-CV-C-5 (W.D. Mo. April 1, 1986).

In an Order to Develop the Record, the Board suggested to the parties that it would appear to be bound by the court's ruling on the applicability of section 95.511. The State responded that it was appealing the district court's decision to the U.S. Court of Appeals for the Eighth Circuit and requested that the Board continue its deliberations on this point in the possibility that a Board decision in the State's favor would render moot the need for further appellate proceedings.

As a United States district court has ruled on this specific procedural point and the State did not provide any reasons why the court's ruling was wrong or why it should not be binding, we reject the State's procedural argument.

-- whether the costs associated with negative determinations of IV-E eligibility qualify for FFP under Title IV-E; and

-- whether definitions in the State's time study code for unallowable social services and allowable administrative activities are impermissible.

In the course of this appeal the Agency raised the additional issue of whether the administrative costs resulting from the State's amendment, if accepted, would be unreasonable per se within the context and intent of the IV-E program.

I. Whether administrative activities, such as those for plan development, court participation and referrals, are reimbursable under Title IV-E if undertaken for program candidates who never become recipients.

The State's proposed CAP amendment sought to allocate to Title IV-E administrative costs incurred prior to the actual placement of a child in foster care, regardless of whether the child ultimately becomes a recipient of IV-E cash benefits, and costs incurred after a foster care placement has been terminated. 3/ The specific administrative activities at issue are: development of the case plan, preparation for and participation in judicial determinations, and referral to services. The Regional Director rejected the State's proposal, holding that the only administrative costs reimbursable under Title IV-E are those which relate to children who go on to become recipients of benefits as specified in 42 U.S.C. §672. This section provides that a state shall make foster care maintenance payments for a child who has been removed from a home of a relative either as the result of a voluntary placement agreement or a judicial determination. According to the Agency, if a child is a program candidate and does not ever

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3/ The State reasoned that a child who has been in foster care can be just as much a candidate for foster care placement as a child who has not been in placement.

become a recipient of cash benefits, no administrative expenditures incurred for that individual should be reimbursable. 4/

The State maintained that the Agency's focus on section 672 eligibility and the child's removal from his home confuses the standard for FFP in foster care maintenance payments with the standard for FFP in administrative costs under the IV-E program. The State argued that the program established three distinct categories of expenditures which qualify for FFP: foster care maintenance payments, adoption assistance payments, and payments necessary for the proper administration of the IV-E state plan. The State insisted that the issue raised by its CAP amendment was whether the specific activities were allowable administrative costs -- whether they were necessary for the proper and efficient administration of the state plan -- regardless of whether they were provided to candidates who became recipients.

The State explained that there are administrative steps required by the program which must be taken before a child can be removed from his home and placed in foster care and thus become eligible for benefits. The State is first required by its State plan to take reasonable efforts to prevent or eliminate the need for removal of the child from his home or to make it possible for the child to return home. 42 U.S.C. §671(a)(15). If these efforts fail, the State is then required to develop a case plan and a case review system. 42 U.S.C. §671(a)(16). As a necessary step in removing a child from the home, the State may have to prepare for and participate in a judicial proceeding. The State asserted that the Agency has

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4/ Although the Agency included in its appeal file (Ex. 13) a policy announcement (PA-ACYF-85-01, effective November 18, 1985) in support of its position, it did not rely at all on the announcement in its arguments before the Board. In any event, the policy announcement could not be binding on the State for the first two years covered by the proposed plan amendment (the years beginning July 1984 and July 1985), since it was not issued until November 18, 1985. Moreover, to the extent the policy announcement conflicts with the applicable statute and regulations for any subsequent period, the Board must give precedence to the statute and regulations. As we discuss below, the State's position is fully supported by both the statute and the regulations.

authorized reimbursement for administrative activities to carry out these steps by the issuance of 45 CFR 1356.60(c)(2), where such activities as referral to services, preparation for and participation in judicial determinations, and development of case plan are listed as allowable IV-E administrative costs.

We find that the disputed activities are in fact required by the program and are specifically identified by the regulation as allowable with absolutely no indication of the restriction the Agency here seeks to impose. Indeed, several other examples of allowable administrative activities listed in the regulation are not directly tied to individual cash recipients under the program (e.g., licensing of foster homes and rate setting). More importantly, however, the program statute and regulations consistently recognize that the activities in question would be proper administrative costs for program candidates.

As the State argued, these activities are administrative steps taken by the State under its program to bring about foster care placement and hence eligibility for cash benefits. Consequently, where the State performs one of these activities in anticipation of qualifying an otherwise eligible child for foster care benefits, the State should receive reimbursement for the activities as a necessary administrative cost. The program required the State to take the actions irrespective of whether the child subsequently is determined eligible for IV-E benefits or not.

The Agency has agreed to reimburse identical activities provided prior to removal from the home for those children who ultimately become eligible. The State, however, provides the activities in question not knowing whether a child will be removed and should not lose reimbursement simply because a child is not removed. (The reason a child is not removed, for example, may be that the case plan led to a reassessment of the child's home situation or a court refused to remove a child from its home in spite of the State's efforts in judicial proceedings.) The State's CAP would allocate these costs to IV-E only for children who are candidates for foster care benefits and who would be recipients but for the completion of these administrative steps and the eligibility determination itself. The Agency loses sight of the fact that, in order to ensure that every eligible individual becomes a recipient, the State will have to engage in activities for candidates who will never become recipients. These activities are just as much necessary activities for the program as those provided for children who do become program recipients.

The Agency would here require that the State allocate all of the disputed activities, such as referrals and case plan development, to some other federal program, such as those authorized by Titles IV-B or XX. Yet the Agency nowhere explains precisely what relationship these costs would have to another program and why allocation to the other program should be mandatory in the absence of statutory or regulatory authority to that effect. We see no reason why the State must be forced to allocate the costs elsewhere when they are specifically undertaken to fulfill IV-E requirements. 5/

The Agency specifically singles out case development activities as not deserving reimbursement because, according to the Agency, the statute authorizes reimbursement for those services only for children receiving foster care maintenance payments. The provision at issue (42 USC §671(a)(16)), however, does not specifically concern reimbursement but rather requires that an approved state plan provide for the development of a case plan (as defined in section 675(a)) for each child receiving payments.

5/ The regulatory history provides further support to the State's position that it may claim these activities under Title IV-E. In the preamble to the proposed provision which eventually became 45 CFR 1356.60, the Agency stated:

> The costs of conducting the activities essential to fulfilling the plan requirements under Sections 471 of the Act [45 CFR 1356.80] are considered as necessary for the proper and efficient administration of the State plan under Title IV-E, except for the nonrecurring costs of adoption and the cost of complying with the reporting requirements which are deemed to be child welfare services costs and may not be reimbursed under this part. Furthermore, the costs of direct services to children, parents or foster parents to ameliorate personal problems and which go beyond the activities specified in the regulation are to be funded from other programs. The regulation delineates such social service costs from those required to carry out the provisions under Title IV-E. Apart from these exceptions it is recognized that the activities prescribed in the law and the protections provided under Section 427 [Title IV-B, 42 U.S.C. §627] may overlap. The regulation, therefore, provides flexibility to the States to choose which programs to charge these costs and the method used for charging and claiming costs.
>
> 45 Fed. Reg. 86817, 86826 (December 31, 1980) (emphasis added).

The statute, in defining "case plan," clearly envisions that a state may begin to prepare a plan for program candidates prior to their actual placement in foster care, and the Agency did not argue otherwise. Indeed, as already mentioned, the Agency reimburses for case plans prepared prior to removal if the child ultimately becomes eligible for benefits. The preparation of case plans prior to placement, moreover, appears to be fully consistent with the purpose of the statute. It means that the case plan is prepared at a time when options may still exist as to placement and is not merely a justification on paper of what already has occurred. The legislative history strongly suggests that the case plan requirement was to be more than a mere paper requirement. S. Rep. No. 336, 96th Cong., 1st Sess. 1 (1979), reprinted in 1980 U.S. CODE CONG. & AD. NEWS 1448. Thus, as long as a state is acting within the discretion afforded by statute, regulation, its own state plan, and Agency policy guidance by preparing case plans in advance of the removal of the child from the home, we find that the State is performing an activity necessary for the proper administration of the program even if the child ultimately does not become a benefit recipient. 6/

The program provisions authorizing "referral" activities provide a similar case in point. Referrals support the program goal of taking reasonable efforts --

> (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. . . . (42 U.S.C. §671(a)(16))

Obviously to achieve this statutory goal the State would have to engage in referral activities for program candidates, as well as recipients. Moreover, if the referrals are successful, as would be hoped, the child never becomes a program recipient. Since the regulation clearly authorizes reimbursement for referrals and since referrals so clearly further a program

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6/ If in preparing the case plan, the State decides that the child is no longer a candidate for foster care cash benefits, any subsequent case plan activities would not be chargeable to Title IV-E.

goal affecting only program candidates, we see no reason why the State's efforts for such individuals would not be reimbursable under the program. The Agency, of course, can limit reimbursement to only those individuals the State reasonably views as candidates and to only those referrals specifically designed to further the statutory goal of section 671(a)(16). 7/

As a final point showing the unreasonableness of the Agency's position, we agree with the Intervenors that the result of adopting the Agency's position would be to deny FFP where the purpose of the IV-E program -- to keep children out of foster care where possible -- was achieved. As noted above, one of Congress' concerns was the warehousing of children away from their natural homes with little hope of permanent placement. Thus, for example, section 671(a)(15) calls for reasonable efforts to prevent the removal of a child from his natural home. Yet the Agency's interpretation would have the opposite effect to that intended by Congress. Under the Agency's position, a state could be deterred from taking preventive efforts such as referrals since it would have no assurance of receiving IV-E reimbursement if it did, since no reimbursement would be received for referrals that prevented removal of the child. On the other hand, a state which incurred administrative costs prior to the removal stage would have the incentive, if it wished to claim FFP for its administrative activities, to pursue removal of a child from his home even if other options to removal were available. Certainly this would not seem to have been Congress' intention when it enacted the Adoption Assistance and Child Welfare Act.

On the basis of the foregoing, we find that, under the statute and existing regulations, the State should be able to receive reimbursement for the disputed administrative activities.

II. Whether costs associated with negative determinations of IV-E eligibility are reimbursable under Title IV-E.

The State's proposed CAP amendment sought to allocate to Title IV-E the costs of making all eligibility determinations, both positive and negative, for the IV-E program.

7/ Furthermore, as we emphasize in part III of this decision, the State is limited specifically to the referral service per se and may not claim counseling services under the aegis of a referral.

The Agency rejected this proposal, holding that costs associated with the determination of IV-E eligibility must be allocated to Title IV-B and Title XX on the basis of the percentage of Title IV-E to non-IV-E children in the State's custody. As with the question of pre-placement administrative costs, the Agency contended that only administrative costs related to children eligible under 42 U.S.C. §672 are allowable IV-E administrative costs. The Agency claimed that it was longstanding policy for the IV-E program not to allow reimbursement for negative eligibility determinations, with reimbursement for those eligibility determinations for children provided foster care under a program other than IV-E charged to that program.

The State argued that the determination of eligibility, be it positive or negative, is an administrative cost "necessary . . . for the proper and efficient administration of the State plan." The State argued that the Agency by regulation has explicitly authorized eligibility determination as an allowable administrative cost:

> The determination and redetermination of eligibility, fair hearings and appeals, rate setting and other costs directly related only to the administration of foster care program under this part are deemed allowable administrative costs under this paragraph. They may not be claimed under any other section or Federal program.
>
> 45 CFR 1356.60(c)(1)

The State emphasized that the IV-E program is an entitlement program, and as such, the determination of who is and who is not eligible is an indispensable part of the foster care program. The State asserted that the Agency routinely reimburses all eligibility determinations in such programs as AFDC and the Medicaid program. The State pointed out that the Agency had the opportunity to explicitly list negative eligibility determinations as unallowable IV-E costs in 45 CFR 1356.60 as it did other costs, but failed to do so. Finally, the State questioned the logic of the Agency's interpretation of the statute and regulations. The State reasoned:

> If only "affirmative" eligibility determinations received FFP, there would be a great incentive on the part of the states in borderline situations to make "positive" determinations, or to not be as diligent in ascertaining the

> information needed to make "negative" determinations, since only in "positive" eligibility cases under DCA's interpretation would the states receive FFP for their eligibility determination expenses.
>
> Appellant's Brief, p. 15.

As with pre- and post-placement services, we find that the costs of making eligibility determinations are administrative expenditures necessary for the proper and efficient administration of the IV-E program, regardless of the outcome of the determination process. We note that 45 CFR 1356.60(c)(1) specifically authorizes as allowable administrative costs "the determination and redetermination of eligibility." We are persuaded that this entails negative determinations as well.

As an entitlement program, IV-E requires the State to make eligibility determinations. While the parties have disputed the complexity of the Title IV-E eligibility determination process -- the Agency contending that it is generally a simple process, while the State and the Intervenors insisting that it is a complex endeavor requiring many tasks by caseworkers -- it is undisputed that administrative costs are involved. Other entitlement programs, such as Medicaid, reimburse negative as well as positive eligibility determinations. The applicable Medicaid regulation in this regard, 42 CFR 435.1001(a), is essentially the same as 45 CFR 1356.60(c)(1):

> FFP is available in the necessary administrative costs the State incurs in <u>determining and redetermining</u> Medicaid eligibility . . .
>
> (emhasis added)

Similarly, all determinations for the AFDC program are reimbursed. We see no reason why Title IV-E determinations should be treated any differently.

We also find that, if reimbursement for determinations for eligibility that turned up negative were unallowable, states might have an incentive to make more positive determinations. The corresponding amount of costs that would necessarily follow could overshadow the costs associated with a negative determination of eligibility.

We also note that in 45 CFR 1356.60(c)(3) and (4) the Agency specifically excluded certain activities from being reimbursed

as allowable administrative costs. The absence of any mention of negative determinations of eligibility in these subsections supports our conclusion that all determinations of eligibility fall within the scope of 45 CFR 1356.60(c)(1), and are, accordingly, reimbursable under the IV-E program.

Finally, we do not find it reasonable to allocate negative eligibility determinations to another program since there has been no demonstration that the finding of non-eligibility for Title IV-E is the same process as the finding of eligibility for the other program.

Accordingly, on the basis of the foregoing, we conclude that, under the Agency's existing regulatory scheme, the State should be permitted to claim for negative as well as positive eligibility determinations.

III. Whether the State's proposed time study codes comply with Title IV-E and the applicable regulations.

In the CAP amendment the State established the following time study codes for its caseworkers to record time spent on services unallowable as costs under Title IV-E (Code 3) and on administrative activities allowable as costs under Title IV-E (Code 4):

> CODE 3 - CHILD WELFARE THERAPEUTIC COUNSELING
>
> This code should be employed when the worker is directly counseling or providing treatment to a child at risk, the child's family, or to the child's alternative care provider which is aimed at ameliorating or remedying personal problems, behavior or home conditions.
>
> CODE 4 - CHILD WELFARE SERVICE ADMINISTRATION
>
> This code should be used when the CHILD WELFARE activity does not fit into the three preceding definitions. All the following are examples of CHILD WELFARE SERVICE ADMINISTRATION:
>
> - Referral to services;
> - Preparation for and participating in judicial determinations;
> - Placement of the child;
> - Development of the case plan;
> - Case and administrative reviews;

- Case management and supervision;
- Recruitment, study, and approval of foster, adoptive, and other alternative care facilities;
- Case staffings and conferences;
- Permanency planning conferences;
- Investigation, evaluation, and assessment of the child and family's condition;
- Child welfare public information and outreach including contracts with the media, special interest groups, potential volunteers, and caretakers;
- Communication with natural parents or alternative care providers on the status of the child, the case plan, goals for the child and the family, and administrative procedures of the agency;
- Crisis intervention activity;
- All planning, assessments, and paperwork which contribute to the above activities;
- Travel associated with any child welfare activity;

The Agency faulted Code 3 as being under-inclusive and Code 4 as over-inclusive. Specifically, the Agency argued that under Code 3 only direct counseling or treatment were considered unallowable costs under Title IV-E instead of all social services, while Code 4 contained activities that should be considered social services reimbursable under either Title IV-B or Title XX, but not under Title IV-E.

The State questioned why its Code 3 should be rejected when it essentially repeats the wording of 45 CFR 1356.60(c)(3). This regulation provides:

> Allowable administrative costs do not include the costs of social services provided to the child, the child's family or foster family which provide counseling or treatment to ameliorate or remedy personal problems, behaviors or home conditions.

The State argued that the focus of this regulatory prohibition barring IV-E reimbursement is not on the broad category of "social services," but only on those social services "which provide counseling or treatment," a prohibition repeated in its Code 3.

The Agency responded that Code 3, by merely echoing the broad based prohibition of 45 CFR 1356.60(c)(3), would leave the determination of how certain questionable services should be

coded to the unfettered discretion of a social service worker. The Agency emphasized that administrative costs are intended to be technical, managerial-type costs, not to encompass social services and treatment. The Agency alleged that the State had failed to provide examples of what type of activities would fall under Code 3, thereby leaving open the possibility that a myriad of other social services could be charged to IV-E which had previously been allocated to the Title IV-B or Title XX programs. The Agency added that the State's limited interpretation of the prohibition of social services in Code 3 is exacerbated by the over-inclusive provisions of Code 4, wherein such listed activities as crisis intervention and communication with natural parents or alternative care providers are unmistakably social services appropriately charged to the Title IV-B and Title XX programs only.

In response to a Board inquiry as to what specific types of activities would fall within the ambits of Code 3 or Code 4, the State replied that, in keeping with the provisions of 45 CFR 1356.65(c)(3), Code 3 would include only those counseling or treatment activities which "ameliorate or remedy personal problems, behaviors, or home conditions." These would include counseling:

- to prepare a child for adoption;
- to prepare the child and/or his biological family for the child's return home from foster care;
- to the child and/or biological parents regarding termination of parental rights;
- regarding the child's adjustment to school, community, and foster home;
- with the foster child, biological parents, or foster parents -- individually or in groups -- to alleviate personal or behavioral problems; and
- with biological parents to remedy home conditions, such as abuse or neglect, which are injurious to the child.

The State declared that the activities listed under Code 4 are self-explanatory and fall with the range of activities eligible for Title IV-E reimbursement listed at 45 CFR 1356.60(c)(2). That regulation gives a list of examples of IV-E reimbursable activities:

(i) Referral to services;
(ii) Preparation for participation in judicial determinations;

(iii) Placement of the child;
(iv) Development of the case plan;
(v) Case reviews;
(vi) Case management and supervision;
(vii) Recruitment and licensing of foster homes and institutions;
(viii) Rate setting; and
(ix) A proportionate share of related agency overhead.

In describing these activities the State stressed that a Division of Family Services caseworker does not typically provide counseling or treatment activities; rather, the caseworker is primarily a case manager. The State explained that the majority of the counseling and treatment services listed under Code 3 are provided by outside contract specialists. If a caseworker were to engage in such activities, the caseworker's time would be listed as Code 3. If, however, the caseworker refers a child or a child's parents to services provided by an outside, contract provider, the caseworker's action would be a Code 4 allowable administrative cost for referral to services as provided for in 45 CFR 1536.60(c)(2)(i). The State emphasized that Code 4 is used only when an activity does not fit into the definitions of the three preceding codes. The State further noted that the alternate cost allocation plan amendment (Therien Affidavit, Ex. III), submitted after the original amendment was rejected, was approved by the Agency and contained most of the Code 4 activities.

Regulations require that a CAP must contain "sufficient information in such detail" to allow the DCA Director to make an informed judgment on the correctness and fairness of a state's procedures for allocating costs. 45 CFR 95.507(a)(4). While the State's proposed Code 3 closely follows 45 CFR 1356.60(c)(3), we do not consider it unreasonable that the DCA Director demanded more detail from the State. Section 1356.60(c)(2) provides examples of what activities are reimbursable under Title IV-E. It is not an all-inclusive list, but states are still limited to activities closely related to the activities listed and are not permitted to develop entirely new categories of activities. Moreover, the codes for reimbursable activities must be fully consistent with the provisions proscribing reimbursement for counseling at section 1356.60(c)(3).

As noted above, the State provided the Board with a list of counseling activities that it felt were encompassed by its Code 3. This list closely parallels the revised Code 3 that

appears in the amended CAP ultimately accepted. See Therien Affidavit, Ex. III. The State apparently thus takes the view that a more detailed listing of unreimbursable counseling activities is possible.

The revised Code 4 incorporates the examples of administrative costs listed at 45 CFR 1356.60(c)(2). The State's original Code 4 contained many of these same or related activities, but also included costs which, in our opinion, give the appearance of creating new categories of activities unrelated to the underlying regulation. For example, crisis intervention could be subject to misinterpretation as including proscribed counseling services, in that it suggests counseling.

We find, therefore, that the Agency may properly require the State to use time study codes identical to those adopted by the parties in the revised CAP.

Both parties have cited the preamble to 45 CFR 1356.60(c) to support their positions, the Agency arguing that the regulation prohibits all social services costs, the State arguing that the costs of only counseling or treatment are barred. In responding to commenters who opposed the prohibition on reimbursement of administrative costs for social services, the Agency said in the preamble:

> We agree that treatment-oriented services, such as helping families be reunited or finding new permanent homes for children, are vital to the goals of Pub. L. 96-272. However, concurrently with the enactment of title IV-E, Congress enacted a revised title IV-B (Child Welfare Services Program) which provides for the delivery of these social services. In addition, title XX of the Act, now the Social Services Block Grant, provides funds to States for services. Because other sources of Federal funds are available for the provision of these services, the [Agency] has prohibited reimbursement from title IV-E funds for treatment-oriented services as inconsistent with the statutory concept of maintenance expenditures. Funds for those purposes are the major focus of the service programs. Therefore, the final regulation continues the NPRM requirement by prohibiting FFP under title IV-E for treatment-oriented services.
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> 47 Fed. Reg. 30922, 30923 (July 15, 1982) (emphasis added by the State).

Contrary to the State's argument, the preamble emphasizes that treatment-oriented services are not to receive IV-E funding. The DCA Director's insistence on greater details from the State is in no way inconsistent with the preamble. The revised Code 3, acceptable to DCA, does not conflict with the preamble; it merely provides more specificity as to the types of counseling activities not reimbursable under Title IV-E.

Nor are we compelled to find for the State because another region's DCA Director has apparently approved a CAP amendment similar to the State's proposed Code 3. The Intervenors supplied evidence that a different region had approved the time study code of one state, Louisiana, which reads:

> THERAPEUTIC COUNSELING: Counseling or treatment provided to the child, the child's family or foster family aimed at ameliorating or remedying personal problems, behavior or home conditions.

The Agency admitted that it "has apparently approved a similar vague time study code for the State of Louisiana." Agency's Response to Amicus Brief, p. 8. The Agency added, however, that it is presently considering action to require Louisiana to modify its time study code.

In approving CAPs, a regional DCA Director is not required by the regulations to be bound by another region's actions. Furthermore, as noted above, we do not consider this an inconsistency, but rather a request for greater specificity, as permitted by the regulations.

In summary, we therefore find that the DCA Director was within his regulatory authority when he rejected the State's proposed Code 3 and Code 4.

IV. Whether acceptance of the State's CAP amendment would result in unreasonable costs being allocated to the IV-E program.

In the course of this appeal the Agency raised an additional ground for the rejection of the State's amendment: if approved, the amendment would result in administrative costs that would be unreasonable within the context of the IV-E program. The Agency alleged that one effect of the amendment would be an increase in the State's IV-E claims for administrative expenditures from fiscal year (FY) 1984, $153,599, to FY 1985, $7,606,716. Agency's Brief, p. 6. Total claims for the

IV-E program would increase, according to the Agency, from the FY 1984 level of $2,288,814 to $12,780,904 for FY 1985. Id. The Agency contended that this manifold increase in IV-E claims was not accompanied by any corresponding increase (only 9 percent) in the number of children served by the State's IV-E program. The Agency concluded that the amendment's increase in administrative costs was clearly unreasonable given the virtually nonexistent increase in the scope of the State's IV-E program. As further proof of the unreasonableness of the amendment, the Agency compared the amendment's proposed IV-E costs to IV-E costs in other states in the region and deemed the State's costs extravagant.

The Agency theorized that the purpose of the amendment was to shift to Title IV-E costs more appropriately allocable to either Title IV-B, Title XX, or the State's own child welfare programs because IV-E has no funding ceiling, while Titles IV-B and XX have funding caps. 8/ The Agency termed the amendment "a thinly veiled attempt to bleed the Title IV-E program for money that should more appropriately be supplied from other sources, namely state appropriation." Agency's Response to Board Order, pp. 14-15. As a final example of the unreasonableness of the effect of the amendment, the Agency stated that, while costs previously paid under Title IV-B and XX would be shifted to Title IV-E, the State's claims under Titles IV-B and XX would not correspondingly decrease, but would rather retain their previous levels.

The State vehemently denied the Agency's allegations concerning the reasonableness of the administrative costs under the amendment. The State declared that its previous CAP severely underclaimed IV-E administrative costs because it contained no time study codes to determine and allocate the administrative costs of Children's Services caseworkers. The State explained that it had previously claimed IV-E reimbursement under the optional hypothetical ceilings set forth at 42 U.S.C. §674(c) because it never had sufficient data to determine whether it was fully reporting all of the costs attributable to the IV-E program; instead, it had reported only sufficient foster care claims to qualify DFS to receive grant awards up to the

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8/ For the IV-B program, states receive funds pursuant to an allotment set forth at 42 U.S.C. §621. For the Title XX program, the allotment formula is set forth at 42 U.S.C. §1397b.

hypothetical ceiling. Therien Affidavit, paragraph 5. The State maintained that the anticipated IV-E costs would not be unreasonable because they would not represent new or increased costs; rather, the State would be allocating and reporting these costs differently, charging Title IV-E with its true costs, and no longer using Title IV-B and Title XX funds to pay for IV-E activities. Id., paragraph 6.

The State noted that neither DCA nor the Regional Director had cited the unreasonableness of potential costs as a basis for disapproval of the amendment. The State further argued that there is no evidence that indicates that it has actually increased the administrative costs generated by the IV-E program; the State has merely changed its methodology for claiming those costs. The State disputed the Agency's contention that the State's IV-E administrative costs would be disproportionate to IV-E costs claimed by other states nationally, supplying tables and graphs to support this claim. Reply Brief, p. 36; Therien Affidavit, Ex. I. As for the regional comparison made by the Agency, the State contended that it is impossible for the Agency to make an accurate comparison when those other states are still operating their IV-E programs under the hypothetical reimbursement ceiling set forth in 42 U.S.C. §674(c).

As this case developed, the Agency conceded a significant portion of any possible increase by agreeing that preplacements costs for candidates who ultimately are determined IV-E eligible are reimbursable under IV-E. Agency's Brief, pp. 25-26. There has been no demonstration, then, of what part of the original alleged increase represents activities still disputed. Also, we agree with the Agency that the language of the time study codes should be modified and that may affect the total amount ultimately claimed. Regardless of the amount of claim increases resulting from the amendment, we find the increases would be reasonable since they represent proper and necessary administrative activities in the IV-E program.

As we stated previously in this decision, the costs for pre-placement and negative eligibility determinations are authorized by statute and regulations as IV-E reimbursable costs. If the activities are thus authorized, the mere fact that the claimed costs may increase from one fiscal year to the next through use of a different claiming methodology implemented by a plan amendment should not be used as a

ground for disapproving the amendment if the amendment is otherwise permissible. Nor do we find the Agency's conclusions drawn from a comparison of the State's IV-E administrative costs to those of other states valid. As long as the costs are authorized under the Act, a state should be entitled to receive reimbursement, regardless of whether neighboring states fail to claim similar activities or structure their IV-E programs in a fashion that results in lower claims against the federal government.

Conclusion

For the reasons discussed above, we reverse the Regional Director's finding that the State may not claim in its CAP certain administrative costs under Title IV-E and current regulations implementing Title IV-E. We also find, however, that the DCA Director's rejection of the definitions in the original time study codes was permissible under the regulations.

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Donald F Garrett
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Presiding Board Member