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Informational Letter

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I. Purpose

The purpose of this Informational Letter (INF) is to provide supplemental information about the types of errors that were identified by the U.S. Department of Health and Human Services' (DHHS's) Administration for Children and Families (ACF) in its Final Report on the New York State Title IV-E Foster Care Secondary Eligibility Review. Supplemental information is being provided so social services districts may review local

practices and take steps to assess local quality assurance processes that support compliance with Title IV-E child and provider eligibility requirements.

II. Background

On October 24, 2006, OCFS issued 06-OCFS-LCM-11 to social services districts, which transmitted a copy of the federal report by ACF. This INF provides a statewide summary of the types of errors described in the report. In the 2006 Title IV-E Foster Care Secondary Eligibility Review (FCER), New York State was allowed a maximum of 15 errors. There were 13 error cases in the review for an overall case error rate of 8.67% with some cases containing multiple errors. General information is provided below about the error cases and improper payments.

Error Cases

A sample case is determined to be in error when a review of the case record indicates that a Title IV-E eligibility requirement was not met at the time of the child's removal from home, or any time during the period under review (PUR), and a Title IV-E maintenance payment or administrative cost is made for the ineligible period. ACF reported errors in the following categories:

Validity of Removal

Four cases were determined to be in error because the circumstances of the removal did not meet Title IV-E requirements for a valid removal. The federal position on removal is that if there is a court order directing the removal of the child from his or her home, the child must be removed at the time of the court order. In three of the cases, the removal was not considered valid because the physical removal of the child occurred from three to five weeks after the court issued the initial removal order; there was no further court order or voluntary placement agreement addressing the need for removal at that time; and the initial court orders did not address a judicial expectation that removal of the child from the home would be delayed. In the fourth case, a valid voluntary placement agreement was executed, but the child was permitted to remain in the same home and be treated as if placed in a foster family home. The federal position is that a removal pursuant to a voluntary placement agreement is considered to not have occurred in situations where the parent or another specified relative signed the voluntary placement agreement and the child was permitted to remain in the same home under the supervision of the local district. In these four cases, the child was not eligible for Title IV-E for the duration of the foster care episode.

Reasonable Efforts to Prevent Removals

Three cases had insufficient court order language pertaining to reasonable efforts to prevent removal. In two of the cases, the court order did not cite the child specific basis for the court's determination that reasonable efforts were made to prevent removal. The third case contained a judicial determination that reasonable efforts to prevent removal were not made, but that the lack of such efforts was appropriate. The basis for this determination was that the child's behavior necessitated the protection of the community.

ACF applied the standards for when a court may make a determination that reasonable efforts are not required [federal regulation 45 CFR 1356.21(b)(3)] and found that the court determination in this case failed to apply to any of the exceptions set forth in the federal regulation.

AFDC Initial Eligibility

Three cases lacked documentation to establish the child's eligibility for Aid to Families with Dependent Children (AFDC) at the time of placement. To be determined eligible for Title IV-E, the case must include documentation and assessment of family income for the purpose of establishing AFDC financial need. It is important to carefully review the entire case record (including progress notes). In each of the three cases, there was information to indicate that there was household income, but such income was not included in the budget.

Reasonable Efforts to Make and Finalize a Permanency Plan

Two cases did not meet this requirement. One case was cited as an error because the record did not contain the required judicial determination during the PUR. In that case, the permanency hearing was not timely. In the other case, the judicial determination was five months late. In order to be eligible for Title IV-E, there must be documentation of a judicial determination made no later than 12 months from the date the child is considered to have entered foster care and at least once every 12 months thereafter that reasonable efforts were made to finalize the child's permanency plan that was in effect. As long as the child remains in foster care, subsequent judicial determinations must occur no later than 12 months from the date of the previous determination.

If the judicial determination of "reasonable efforts to finalize the child's permanency plan" is not made or is not timely, the child is ineligible for Title IV-E funding from the time the finding is due until the beginning of the month in which the finding is made. The Permanency Law of 2005 supports local social services districts' adherence to this Title IV-E eligibility requirement. The Permanency Law does not change the federal standards. However, it amends state law so as to assist local districts in complying with the federal standards. The new law amends the time periods for the holding of permanency hearings to require earlier and more frequent permanency hearings. Adherence to this law will assist local districts in complying with the federal requirement for a permanency hearing every twelve months.

Placement in a Licensed Foster Family Home or Child Care Institution

Two cases were cited as error cases because a child was not placed in a licensed foster care setting for a period when a Title IV-E maintenance payment was made. Title IV-E reimbursement for foster care maintenance costs may only be claimed after the home is fully licensed or approved. In one case, the local district specifically "decertified" the home, but left the child in the home and continued to make Title IV-E payments during the period when the home was decertified. In the other case, a Title IV-E payment was issued for transportation costs during a period when the child was in a substance abuse treatment facility, which is a facility not considered eligible for Title IV-E payments.

Safety Requirements of Provider

In two cases, the child was placed in a foster home but documentation of the required criminal history record check (CHRC) for the foster parents was not available or was not completed until after Title IV-E maintenance payments had already begun during the period under review. Both of the cases were documented by local districts as fully licensed. Title IV-E reimbursement for foster care maintenance costs may only be claimed after the CHRC for the foster parents has been completed and the home is fully licensed. Additionally, any crimes identified in the CHRC must be fully assessed by completing and documenting a safety assessment before the home is fully licensed.

Voluntary Placement Agreement

In one case, the voluntary placement agreement was not signed by a parent or legal guardian. In order to be eligible for Title IV-E, a valid voluntary placement agreement must be signed by a parent or legal guardian and the social services district representative. For further information on the federal standard related to voluntary placement agreements, please see the OCFS Title IV-E website, Title IV-E Review Reminder, Volume 1, Issue 5 on Voluntary Placement Agreements found on the OCFS intranet site <http://ocfs.state.nyenet/dps/IVe/secondaryreview.asp#volplacement>.

Care and Custody with State Agency

There was one case in which Title IV-E payments continued to be claimed for a child after the child was discharged from foster care. The child was finally discharged from foster care on February 9, 2006, and payments continued to be made and claimed as Title IV-E through February 28, 2006. Once a child is finally discharged from foster care, the local social services district no longer has legal authority for care and custody of the child and may not claim Title IV-E.

Systemic Issues

In the final report, ACF cited some systemic areas in need of improvement and recommended that these issues be addressed as part of the state's ongoing efforts to improve operations. ACF found that many of the forms used to document eligibility were difficult to read, not the most current version developed by OCFS, and/or did not provide information on the correct month used to determine initial eligibility. Furthermore, the forms did not include the amount and source(s) of income and/or resources (i.e., cash on hand, bank accounts, stocks, bonds, securities, promissory notes). Lastly, parental deprivation factor(s) were poorly documented. Parental deprivation factors at initial determination include one or more of the following: absence of a parent from the home, incapacity of the parent, unemployed parent/underemployed parent, or death of a parent. Forms LDSS-4809 (REV. 5/07), Initial Foster Child Eligibility Checklist and LDSS-4810 (REV. 5/07), Re-determination of IV-E Eligibility Checklist must be maintained in the case record along with the required supporting documentation.

In order to provide social services districts with better front-end instructions and more supported assistance in making correct eligibility determinations, OCFS has recently revised the OCFS Eligibility Manual for Child Welfare Programs and will be reviewing and revising eligibility checklists to better enable recording of the information required to improve eligibility determinations.

ACF also noted that the process for foster home licensing and addressing safety considerations might be a systemic area in need of improvement. Six cases were found where a full license was issued even though the safety considerations process was not yet completed for prospective foster parents. OCFS will evaluate procedures for foster home certification in 2007 and work with districts to determine whether appropriate procedures are in place to obtain this documentation before foster home licenses are issued.

Payment Errors

In addition to the 13 error cases, there also were 29 cases cited for improper payments. These cases were classified as non-error cases. These cases contained payments that were ineligible for federal funding because an eligibility requirement was not met during a period *outside* of the six-month PUR. If these 29 improper payments had all occurred during the six-month PUR, they would have been classified as error cases and New York State would not have been found to be in substantial compliance. ACF reported improper payments in the following categories:

Reasonable Efforts to Finalize the Child's Permanency Plan

There were 22 cases cited for improper payments because a Title IV-E payment was made for a period during which there was a lapse or delay in the required 12-month judicial determination regarding reasonable efforts to finalize the child's permanency plan.

Licensing and Safety Requirements of Provider

There were seven cases cited for improper payments due to issues around licensing/approval and completion of CHRC for foster parents. Title IV-E maintenance can be claimed only when the foster home is fully licensed or approved and the CHRC has been completed. Additionally, any crimes identified in the CHRC must be fully assessed by completing and documenting a safety assessment before the home is fully licensed.

Status of Appeal

On October 24, 2006, OCFS filed a notice of appeal with the U.S. DHHS Departmental Appeals Board (DAB). In the appeal, OCFS is seeking review of 15 of the 29 children with payment errors, where ACF identified as the only error basis a lack of ongoing judicial activities allegedly required by Section 471(a)(15)(c) of the Social Security Act (a timely judicial determination that reasonable efforts were made to finalize the permanency plan). In addition, OCFS appealed the findings in five individual error cases: two cases were disallowed because the removal of the child allegedly did not

coincide with the court order; one case involving a juvenile delinquent (JD) where ACF determined that the court order did not contain the required best interests/reasonable efforts findings; in another case ACF determined that a removal order was necessary where the child's parent signed a voluntary placement agreement after the court denied a Petition for Removal; and a case where ACF considered the first judicial determination of "reasonable efforts to finalize the child's permanency plan" not timely because there were two removal orders and ACF determined that the first order, which gave care and custody to a relative and not the social services district, should be used to determine the due date for the reasonable efforts determination.

The issue presented by the 15 children lacking ongoing judicial activities (a timely judicial determination that reasonable efforts were made to finalize the permanency plan) is the same legal issue that OCFS previously appealed in DAB Decision No. 1984, which arose out of the Primary Eligibility Review in 2003. OCFS challenged that decision in federal district court in an action entitled: *State of New York v. United States Department of Health and Human Services' Administration for Children and Families et. al.* Case Number: 06-cv-1272. The DAB, on consent of the parties, agreed to stay our current appeal of the 15 children until such time as the federal lawsuit is resolved.

With respect to the five individual error cases, OCFS requested that the federal agency supplement the record of the appeal for the DAB with additional information concerning their instructions regarding reasonable efforts. Upon completion of that event, OCFS will file a brief before the DAB.

III. Program Implications

ACF will be returning to New York State in 2009 to conduct another Title IV-E Primary Eligibility Review, which means the random sample of cases may be pulled from cases claimed as early as 2008.

Over the past few years, New York State, in collaboration with social services districts and the courts, has made steady progress in Title IV-E compliance. However, in the 2009 review the threshold for errors will be reduced from a 10% error rate in the 2006 review to a 5% error rate for the random sample of 80 cases, or 4 or less error cases. In order to be successful in 2009, OCFS and social services districts must achieve an even higher level of compliance. It is recommended that social services districts review local practices and take steps to continue to make any increasing improvements to comply with Title IV-E child and provider eligibility requirements, to eliminate potential problems in the next review. Continued communication and work with the courts is vital to this effort. It is important to remember that Title IV-E eligibility requirements must be met for each child, regardless of the Federal Review process.

For additional information on Title IV-E eligibility requirements, please refer to the federal Child Welfare Policy Manual at http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/index.jsp.

The federal manual contains updated information on statutes, regulations, and policies on several federal programs, including Title IV-E. Another available resource is the OCFS Eligibility Manual for Child Welfare Programs, which may be found at <http://www.ocfs.state.ny.us/main/publications/>. OCFS developed this Eligibility Manual to provide social services districts with up-to-date guidance and requirements for determining eligibility for federal funding of child welfare programs. The manual contains procedural information for determining and authorizing eligibility, and for encoding the state's information systems that will lead to appropriate federal claiming of funding for programmatic and administrative expenses. If local districts and voluntary agencies have questions on Title IV-E, they should forward them to the OCFS Regional Office.

/s/ Jane G. Lynch

Issued By:

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Title: Deputy Commissioner

Division/Office: Division of Development and Prevention Services