

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF FEDERAL NONPARTICIPATING
FOSTER CARE COSTS WHICH THE
NEW YORK STATE DEPARTMENT OF
FAMILY ASSISTANCE RETROACTIVELY
CLAIMED TO THE TITLE IV-E
FOSTER CARE PROGRAM**



**APRIL 2001
A-02-98-02004**

Office of Inspector General

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OAS FINDINGS AND OPINIONS

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed as well as other conclusions and recommendations in this report represent the findings and opinions of the HHS/OIG/OAS. Final determination on these matters will be made by authorized official of the HHS divisions.





DEPARTMENT OF HEALTH & HUMAN SERVICES

Office Of Inspector General
Office Of Audit Services

Region II
Jacob K. Javits Federal Building
26 Federal Plaza
New York, NY 10278

APR 24 2001

Our Reference: Common Identification No. A-02-98-02004

Mr. John A. Johnson
Commissioner, Office of Children and Family Services
Department of Family Assistance
52 Washington Street
Rensselaer, New York 12144

Dear Mr. Johnson:

Enclosed are two copies of the U.S. Department of Health and Human Services, Office of Inspector General, Office of Audit Services' final report entitled "Review of Federal Nonparticipating Foster Care Costs Which the New York State Department of Family Assistance Retroactively Claimed to the Title IV-E Foster Care Program." A copy of this report will be forwarded to the action official noted below for his/her review and any action deemed necessary.

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

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To facilitate identification, please refer to Common Identification Number A-02-98-02004 in all correspondence relating to this report.

Sincerely yours,



Timothy J. Horgan
Regional Inspector General
for Audit Services

Enclosures – as stated

Direct Reply to HHS Action Official

Ms. Mary Ann Higgins
DHHS, Northeast Hub Director
ACF, Region 2
26 Federal Plaza, Room 4114
New York, NY 10278

EXECUTIVE SUMMARY

Background

The New York State Department of Family Assistance (NYSDFA) (formerly the New York State Department of Social Services) awarded a contract to the New York State Association of Counties (NYSAC) to implement and administer a Federal Revenue Maximization Project (FRMP) designed to generate increased Federal funding. According to the terms of the contract, NYSDFA was to pay NYSAC a fee contingent on the revenue generated under the FRMP.

The NYSAC identified eight distinct areas (called Modules) where increased Federal funding could be generated. Module 3 involved identifying Federal nonparticipating foster care costs and kinship foster care costs that NYSDFA considered eligible for Federal reimbursement under the Title IV-A Emergency Assistance (EA) program and the Title IV-E Foster Care program. State programs which are not supported by Federal funds are known as Federal Nonparticipating Programs or FNP. In New York, FNP foster care costs represent maintenance payments for children who live in a foster care setting but are not eligible for assistance under the Federal Title IV-E Foster Care program. Kinship foster care costs represent maintenance payments for foster care children placed with relatives.

To develop Module 3 statewide, NYSAC subcontracted with the Institutes for Health and Human Services (IHHS). The IHHS was responsible for reviewing local social service case records and obtaining documentation to support that the costs were eligible for Federal reimbursement. According to the terms of the State contract, IHHS was responsible for documenting compliance with foster care eligibility requirements relating to age, deprivation and physical removal.

In this report, we discuss the results of our review of FNP foster care costs totaling \$1,741,952 (Federal share \$870,976) which NYSDFA retroactively claimed to the Title IV-E Foster Care program. Previously, under Common Identification Number (CIN): A-02-98-02002, we provided NYSDFA with the results of our review of FNP foster care costs which NYSDFA retroactively claimed to the EA program. Also, under CIN: A-02-99-02001, we provided NYSDFA with the results of our review of kinship foster care costs that NYSDFA retroactively claimed to the EA program.

Objective

The objective of our review was to determine whether FNP foster care costs, which NYSDFA retroactively claimed to the Title IV-E Foster Care program, were allowable for Federal reimbursement. In order to accomplish our objective, we expanded our tests to determine whether the retroactive claims also met foster care eligibility requirements concerning home approval.

Summary Of Findings

We reviewed a statistical sample of 100 FNP foster care cases, totaling \$1,268,262 (Federal share \$634,131), which NYSDFA retroactively claimed to the Title IV-E Foster Care program. Based on our review of the first 30 sample cases selected, we found that the cases were in compliance with foster care eligibility requirements for age, deprivation and physical removal. However, we found that three of the cases were not in compliance with foster care eligibility requirements related to home approval. Therefore, we decided to focus the scope of our review of the remaining 70 cases on the home approval issue only. We found that seven of the 100 cases reviewed contained claims that were ineligible for Federal reimbursement because there was no evidence that the home the child was placed in was in compliance with the home approval requirements of the Foster Care program. The total amount improperly claimed to the Title IV-E Foster Care program for seven errors was \$25,372 (Federal share \$12,686).

Recommendation

Since the Administration for Children and Families (ACF) deferred these claims, we recommend that NYSDFA reduce their retroactive claim by \$25,372 (Federal share \$12,686).

Auditee Comments

In comments dated February 9, 2001 (See Appendix A), NYS officials indicated that, according to the draft report, 32 of the 70 cases reviewed for home approval did not have documentation that the homes were in compliance with the home approval requirement of the foster care program. However, the NYS officials noted that documentation for Home Approvals was not part of the Federal Revenue Maximization Project, and therefore was not available in the case records reviewed by the OIG. The Project and the initial scope of the Module 3 review by OIG addressed only IV-E eligibility related to the children reclassified as IV-E, and not their placements.

After being provided with a list of the 32 children and their placements, the NYS officials provided additional documentation for consideration.

OIG Comments

We evaluated all additional information that was provided to us after the issuance of our draft report and made appropriate adjustments to our final report.

INTRODUCTION

Background

State programs which are not supported by Federal funds are known as Federal Nonparticipating Programs or FNP. In New York, FNP foster care costs represent maintenance payments for children who live in a foster care setting but were determined to be ineligible for assistance under the Federal Title IV-E Foster Care program. Maintenance payments cover the cost of food, shelter, a yearly clothing allowance, daily supervision and school supplies. In addition, maintenance payments can cover costs for diapers, special furniture and equipment, day and summer camps and special attire for proms, religious observances and graduations.

The Title IV-E program grew out of congressional concern 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 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.

Under Title IV-E, Federal matching of FNP foster care maintenance payments is available for children who would otherwise be eligible for Aid to Families with Dependent Children. The ACF has taken the position that FNP foster care costs would be allowable for Federal reimbursement under the Title IV-E Foster Care program provided eligibility requirements are met. These costs may be retroactively claimed within the 2-year filing deadline established under Section 1132 of the Social Security Act.

The NYSDFA awarded a contract to NYSAC, a not-for-profit corporation, to implement and administer an FRMP designed to generate increased Federal funding. According to the terms of the contract, the NYSDFA was to pay NYSAC a fee contingent on the revenue generated under the FRMP. The NYSAC identified eight distinct areas (called Modules) where increased Federal funding could be generated. Module 3 involved identifying costs that NYSDFA considered eligible for Federal reimbursement under the Title IV-A EA program and the Title IV-E Foster Care program.

COSTS CLAIMED
UNDER FRMP MODULE 3

Office of Audit Services Common <u>Identification Number</u>	<u>Type of Cost</u>	<u>Retroactive Transfer To</u>	<u>Gross Claim</u>	<u>Federal Share</u>	<u>Period of Claims</u>
A-02-98-02002	FNP Foster Care	Title IV-A (EA)	\$13.2 million	\$6.6 million	4/1/96 - 2/31/97
A-02-98-02004	FNP Foster Care	Title IV-E (Foster Care)	\$1.7 million	\$870,976	7/1/96 - 2/31/97
A-02-99-02001	Kinship Foster Care	Title IV-A (EA)	\$92.7 million	\$46.4 million	1/1/94 - 2/31/97

To develop this module statewide, NYSAC subcontracted with IHHS. According to the terms of the contract, NYSAC was to pay IHHS a percentage of the contingent fee earned under the FRMP. The IHHS reviewed local social service case records and obtained documentation to support that the Module 3 costs were eligible for Federal reimbursement.

In this report, we discuss the results of our review of FNP foster care costs totaling \$1,741,952 (Federal share \$870,976) that NYSDFDA retroactively claimed to the Title IV-E Foster Care program during the period July 1, 1996 to December 31, 1997. The ACF decided to defer the claims, rather than pay them, because they were unable to determine if the costs were allowable.

Objectives, Scope And Methodology

The objective of our review was to determine whether FNP foster care costs, which NYSDFDA retroactively claimed to the Title IV-E Foster Care program, were allowable for Federal reimbursement.

To accomplish our objective, we:

- C Met with ACF officials to discuss the objective.
- C Met with representatives of the State and IHHS to obtain an understanding of their respective responsibilities for the development of the retroactive claims and the eligibility factors considered in developing the retroactive claim.

- C Obtained detailed claims rosters and case files for FNP foster care costs claimed to the Title IV-E Foster Care program for the period July 1, 1996 to December 31, 1997.
- C Used simple random sampling techniques to select a sample of 100 cases totaling \$1,268,262 (Federal share \$634,131) from the universe of FNP foster care costs which were retroactively claimed to the Title IV-E Foster Care program. Because the error rate was so low, we are not projecting an overpayment. Rather, we are recommending a claim adjustment for the actual value of the errors found.
- C For the first 30 sample cases selected, we:
 - 1. Reviewed documentation contained in IHHS s case files to determine if foster care eligibility requirements for age, deprivation, physical removal and home approval were met.
 - 2. Contacted local district officials to obtain additional information for each deficiency identified.
- C Based on the results of our review of the first 30 cases, we concluded with reasonable assurance that the FNP foster care cases in the universe met foster care eligibility requirements for age, deprivation and physical removal. However, we also found that three FNP foster care cases did not meet requirements related to home approval. Therefore, we decided to focus the scope of our review of the remaining 70 sample cases on the issue of home approval only.
- C For each of the remaining 70 sample cases selected, we:
 - 1. Reviewed documentation contained in IHHS s case files to determine if the foster care children were placed in homes that have been approved in accordance with the requirements of the Foster Care program.
 - 2. Briefed NYSDFA and local district officials on home approval deficiencies identified and provided them with information as to what documentation was needed. Where provided, we reviewed any additional documentation provided to support the claim.

Our review was performed in accordance with generally accepted standards for governmental auditing. However, we did not rely on the existing system of internal controls over the submission of retroactive claims. Rather, we relied upon substantive audit testing. Our initial field work was performed during the period July 1998 to March 1999. Additional field work was performed during the period February 2001 to March 2001.

FINDINGS AND RECOMMENDATION

To be allowable for Federal reimbursement under Title IV-E, foster care services must be provided to a child that meets eligibility requirements related to age and parental deprivation set forth in 45 CFR 233.10(b)(2)(ii)(a). Also, the child must meet physical removal requirements set forth in Section 472 of the Social Security Act. Further, the child must be placed in a home which was in compliance with New York States home approval requirements.

According to the terms of the State contract, IHHS was responsible for documenting compliance with foster care eligibility requirements relating to age, deprivation and physical removal. However, the contract did not require IHHS to test for compliance with home approval requirements.

We reviewed a statistical sample of 100 FNP foster care cases, totaling \$1,268,262 (Federal share \$634,131), which NYSDFA retroactively claimed to the Title IV-E Foster Care program. Our review focused on the three eligibility criteria included in the State contract with IHHS and we expanded our testing to also determine whether home approval eligibility requirements were met. Based on our review of the first 30 sample cases selected, we found that the cases were in compliance with foster care eligibility requirements for age, deprivation and physical removal. As a result, we concluded with reasonable assurance that the FNP foster care cases in the universe met eligibility requirements for age, deprivation and physical removal. However, we found that three of the cases were not in compliance with foster care eligibility requirements related to home approval. Therefore, we decided to focus the scope of our review of the remaining 70 cases on the home approval issue only.

We found that seven of the 100 cases reviewed contained claims that were ineligible for Federal reimbursement because there was no evidence that the home the child was placed in was in compliance with the home approval requirements of the Foster Care program. The total amount improperly claimed to the Title IV-E Foster Care program for seven errors was \$25,372 (Federal share \$12,686).

Home Approval

Home approval is critically important to ensuring that foster care children are only placed in homes that are safe and meet basic health and safety requirements. Section 472(b) of the Social Security Act states that:

Foster care maintenance payments may be made under this part only on behalf of a child...who is (1) in the foster family home of an individual, whether the payments therefore are made to such individual or to a public or nonprofit private child-placement or child-care agency....

Further, Section 472(c) of the Act explicitly states that:

For the purposes of this part, (1) the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing;....

In NYS, the NYSDFA was responsible for establishing licensing, certification and approval standards for foster family homes and institutional facilities. Standards for licensing and certification of foster boarding homes and approval of relative foster homes are set forth in Chapter II of the regulations of the Department of Social Services Parts 443 and 444.

The State agency also issued Administrative Directive 86 ADM-33 dated October 6, 1986 which addressed the requirements for approving relative foster homes and the policy on the use of relatives as foster care providers as an alternative to placement. The process for approving relatives as foster care providers closely parallels the foster home certification process but, because of the special relationship of these children with their relative foster parents, the regulations were modified to include a number of less prescriptive requirements to expedite the approval process. Provisions of both the certification and approval requirements include:

- C A home study entailing a physical inspection of the home and an assessment of family circumstances.
- C A character evaluation of the adult household members including an inquiry of the State's Central Registry of child abuse/maltreatment information.
- C Foster parent application and orientation processes, including the completion of the foster parent agreement and a report of the foster parent's and family medical well-being.

With respect to the physical inspection of the home, agency procedures as required by Chapter II Parts 444.5 and 444.8 of the regulations of NYSDFA include:

- C Review of the prospective foster home family boarding home for health and safety conditions.
- C The home must be in good condition and present no hazard to health or safety of children.
- C The home must be in substantial compliance with all applicable provisions of State and local laws, ordinances, rules and regulations concerning health and safety.

- C The home must be kept in sufficiently clean and sanitary condition and the agency must be satisfied that: there are sufficient sleeping arrangements and space; there is adequate water supply; the home is free of fire hazards and equipped with at least one fire detector; and there must be adequate bathing, toilet and lavatory facilities.
- C Relative foster homes can be approved on an emergency basis. The home study and application process must be completed before placement of the foster child in the home. The character evaluation must be initiated before placement. These steps are to be carried out pursuant to an emergency approval of the home. The character evaluation medical report and any remaining requirements must be completed within 60 days of placement as a part of a full approval of the home.
- C Certified or approved homes were licensed for 1 year from the child's placement and must be reevaluated annually. A re-certification consisted of evaluations of the home and family, the care provided the foster children and the working relationship with the agency, and a biannual medical evaluation by a physician of the foster family's health.

We contacted the local districts to obtain home approval documentation for all 100 sample cases. For 68 cases, the local districts were able to provide documentation that the child was placed in a home that was approved. For the remaining 32 cases, the local districts were unable to provide us with any evidence that the child was placed in a home that was approved. We contacted NYSDFA and gave them an opportunity to provide evidence that the 32 homes were approved. After the issuance of the draft report, NYSDFA officials provided us with additional documentation for consideration. After evaluating this additional documentation, we determined that seven of the 100 cases reviewed contained claims that were ineligible for Federal reimbursement because there was no evidence that the home the child was placed in was in compliance with the home approval requirements of the Foster Care program. The total amount improperly claimed to the Title IV-E Foster Care program for these seven errors was \$25,372 (Federal share \$12,686).

Conclusions And Recommendation

Our review showed that of 100 sample FNP foster care cases reviewed, seven cases contained claims that were ineligible for Federal reimbursement because there was no evidence that the home the child was placed in was in compliance with the home approval requirements of the Foster Care program. As a result, we determined that NYSDFA and its contractors failed to justify that FNP foster care costs totaling \$25,372 (Federal share \$12,686) were eligible for Federal reimbursement under the Title IV-E Foster Care program.

Since ACF deferred these claims, we recommend that NYSDFA reduce their retroactive claim by \$25,372 (Federal share \$12,686).

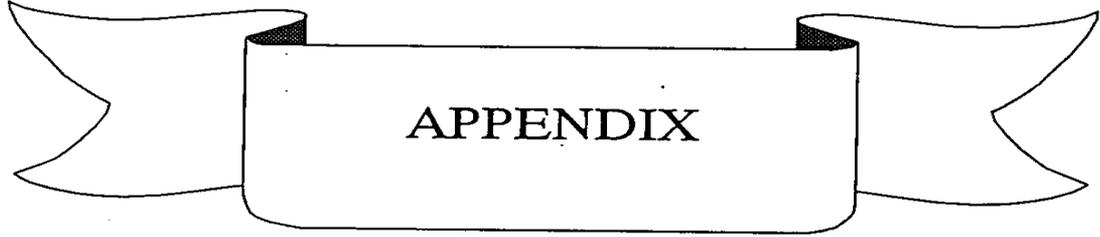
NYS Comments

In comments dated February 9, 2001, NYS officials indicated that, according to the draft report, 32 of the 70 cases reviewed for home approval did not have documentation that the homes were in compliance with the home approval requirement of the foster care program. However, the NYS officials noted that documentation for Home Approvals was not part of the Federal Revenue Maximization Project, and therefore was not available in the case records reviewed by the OIG. The Project and the initial scope of the Module 3 review by OIG addressed only IV-E eligibility related to the children reclassified as IV-E, and not their placements.

After being provided with a list of the 32 children and their placements, the NYS officials provided additional documentation for consideration. The complete text of the NYS comments is presented as Appendix A to this report.

OIG Comments

We evaluated all additional information that was provided to us after the issuance of our draft report and made appropriate adjustments to our final report.



APPENDIX



New York State
Office of
Children & Family
Services

George E. Pataki
Governor

John A. Johnson
Commissioner

February 9, 2001

Mr. John J. Madigan
Audit Manager
Office of the Inspector General
Office of Audit Services
14 Computer Drive West
Albany, New York 12205

Re: Common Identification
Number A-02-98-02004

Dear Mr. Madigan:

The purpose of this letter is to respond to the U.S. Department of Health and Human Services, Office of the Inspector General, Office of Audit Services' draft report entitled "Review of Federal Non-Participating Foster Care Costs which the New York State Department of Family Assistance Retroactively Claimed to the Title IV-E Foster Care Program".

This report relates to the Title IV-E claims that were submitted based on work done under a contract between the New York State Department of Family Assistance and the New York State Association of Counties (NYSAC) to administer a Federal Revenue Maximization Project. Module 3 of this project concerns cost retroactivity claimed to the Title IV-E Foster Care program. The review of these claims, conducted by your office, looked at 100 FNP foster care cases; 30 cases for compliance with the foster care eligibility requirements of the children, and the remaining 70 cases for "home approval" documentation.

The OIG finding for the 30 cases reviewed for IV-E foster care eligibility requirements was that all cases were in compliance.

According to this draft report, 32 of the 70 cases reviewed for home approval, did not have documentation that the homes were "in compliance with the home approval requirement of the foster care program".

Based on this finding, OIG is recommending that there be a reduction of \$274,168 in this retroactive IV-E claim. The claim had been deferred by ACF.

It should be noted that documentation for Home Approvals was not part of the Federal Revenue Maximization Project, and therefore was not available in the case records reviewed by the OIG. The Project and the initial scope of the Module 3 review by OIG addressed only IV-E eligibility related to the children reclassified as IV-E, and not their placements.

Capital View Office Park

52 Washington Street
Rosenselaer, NY 12144-2796



The NYS Office of Children and Family Services has been provided a list of the 32 children and the placements, which OIG found were not documented as approved homes.

However, 15 of these children were placed in group homes or in institutions (during the period of service) which are certified by the State of New York, i.e., the State Office of Children and Family Services, formerly the Department of Social Services. We are providing copies of Operating Certificates for these facilities.

Also, provided are 11 Foster Boarding Home certificates, which cover the period of service (for 13 of the cases cited) in the report.

There were 4 foster boarding home certificates that could not be located. One voluntary agency responded that the homefinder who certified the homes (2 of the Monroe County Foster Homes) would discard the expired certificates whenever a home was re-certified. That agency now saves all Certificates to Board.

The operating certificates and foster boarding home certificates for the 28 cases are enclosed. With this documentation, the claim deferred by ACF should now be paid. Any reduction to the claim should be minimal.

I appreciate the additional time granted by your Office to respond to this report. If you have any questions, please call Veronica Lynch of my staff at (518) 473-0143.

Sincerely,



Kevin D. Robinson
Director
Office of Audit & Quality Control

Enclosures
cc: M. Rosenblat
G. Gordon