



FEB 19 2003

TO: Wade F. Horn, Ph.D.
Assistant Secretary for Children and Families

FROM: Janet Rehnquist *Janet Rehnquist*
Inspector General

SUBJECT: Review of Nebraska's Foster Care IV-E Training Costs for the
Period October 1, 1994 through September 30, 1999
(A-07-02-00138)

As a part of the Office of Inspector General's self-initiated audit work, we are alerting you to the issuance within 5 business days of our final audit report related to the Foster Care program administered by the Nebraska Health and Human Services System. We are recommending recovery of approximately \$11.7 million of federal financial participation (FFP). Copies of the report are attached.

The objective of this review was to determine the allowability and allocability of \$26.8 million in training costs and the corresponding FFP in the amount of \$20.1 million. We used Office of Management and Budget Circular A-87 and the IV-B training plan as our primary criteria in making these determinations.

Nebraska misclaimed training costs by including salaries and related overhead for staff who were not in training; not identifying and charging training costs to all benefiting programs; and claiming overhead costs at an unallowable enhanced FFP rate not in accordance with the approved state plan.

Nebraska disagreed with our recommendations. They asserted that all salaries claimed as training were allowable and that we were using incorrect criteria when determining the allocability of overhead costs.

Any questions or comments on any aspect of this memorandum are welcome. Please contact me or have your staff call Donald L. Dille, Assistant Inspector General for Grants and Internal Activities, at (202) 619-1175.

Attachment



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General
Office of Audit Services

A-07-02-00138

FEB 24 2003

Region VII
601 East 12th Street
Room 284A
Kansas City, Missouri 64106

Mr. Ron Ross, Director
Nebraska Health and Human Services System
P.O. Box 95044
Lincoln, Nebraska 68509-5044

Dear Mr. Ross:

Attached are two copies of the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), Office of Audit Services's (OAS) report entitled "Nebraska's Foster Care IV-E Training Costs for the period October 1, 1994 through September 30, 1999." A copy of this report will be forwarded to the action official noted below for his review and any action deemed necessary.

Final determinations as to actions taken on all matters reported will be made by the HHS 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 you may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), OIG, OAS reports issued to the Department's grantees and contractors are made available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act which the Department chooses to exercise. (See 45 CFR Part 5.) As such, within ten business days after the final report is issued, it will be posted on the world wide web at <http://oig.hhs.gov>.

To facilitate identification, please refer to report number A-07-02-00138 in all correspondence relating to this report.

Sincerely yours,

James P. Aasmundstad
Regional Inspector General
For Audit Services

Enclosures – as stated

Direct Reply to HHS Action Official:

Ms. Linda Lewis
Regional Administrator, Region VII
601 East 12th Street, Room 276
Kansas City, MO 64106

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NEBRASKA'S FOSTER CARE
IV-E TRAINING COSTS
FOR THE PERIOD OCTOBER 1, 1994
THROUGH SEPTEMBER 30, 1999**



**JANET REHNQUIST
INSPECTOR GENERAL**

**FEBRUARY 2003
A-07-02-00138**



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General
Office of Audit Services

A-07-02-00138

FEB 24 2003

Region VII
601 East 12th Street
Room 284A
Kansas City, Missouri 64106

Mr. Ron Ross, Director
Nebraska Health and Human Services System
301 Centennial Mall South
P. O. Box 95044
Lincoln, Nebraska 68509-5044

Dear Mr. Ross:

This report provides the results of our audit of Nebraska's Foster Care IV-E Training Costs for the period October 1, 1994 through September 30, 1999. The Foster Care program under title IV-E of the Social Security Act is administered by the Nebraska Health and Human Services System (Nebraska). The objective of our audit was to determine the allowability and allocability of \$26,817,263 in training costs and the corresponding federal financial participation (FFP) in the amount of \$20,112,947.

Nebraska charged training costs to the federally supported title IV-E Foster Care program without eliminating non-training costs and costs that were not allocable to the IV-E program. Specifically, Nebraska overstated training costs by \$19,265,924 (FFP of \$11,681,442) by:

- including salaries and related overhead for staff who were not in training,
- including unsupported costs,
- including program costs allocated in error,
- not identifying and charging training costs to all benefiting programs, and
- claiming allocated overhead costs at an unallowable enhanced FFP rate.

We are recommending that Nebraska reduce title IV-E training costs reported by \$19,265,924 and claimed FFP by \$11,681,442. In addition, we are recommending that Nebraska obtain an agreement with the Division of Cost Allocation (DCA) for allocating costs that are allocable to the program and allowable according to the approved state plan.

Nebraska officials disagreed with our findings. They contend that the employee's probationary phase constitutes on-the-job training, as described in an attachment to the state's IV-B training plan, and which could be claimed for IV-E training reimbursement. In addition, they contend that a Departmental Appeals Board (DAB) decision allows an interpretation of Office of Management (OMB) Circular A-87 for a wide range of methodologies in allocating costs including charging all training costs to a single

program. Based on our review of the plan approved by the Administration for Children and Families (ACF) and discussions with ACF staff, we believe that the probationary period was not training, and that on-the-job training was not approved at the enhanced FFP rate. We also believe that federal laws, regulations, policies, and DAB decisions clearly support our position that costs should be allocated to benefiting programs.

Following the recommendations for our findings, we have summarized Nebraska's response and added our comments. The state's response is included in its entirety as Appendix B.

INTRODUCTION

Background

The 1967 amendments to the Social Security Act established foster care as a mandatory entitlement program under title IV-A, Aid to Families with Dependent Children. In 1980, the Adoption Assistance and Child Welfare Act, Public Law 96-272, established the title IV-E program. Title IV-E authorized federal funds for states to enable them to provide foster care and adoption assistance for children under an approved state plan.

At the federal level, the program is administered by the ACF within the Department of Health and Human Services (HHS). In Nebraska, the state's Health and Human Services System is responsible for administering the program. General cost principles governing the program are found in OMB Circular A-87. Administrative costs related to the title IV-E program are to be allocated in accordance with a cost allocation plan (CAP) approved by the HHS, DCA.

The \$26.8 million of training costs claimed by Nebraska included the cost of a contract with the University of Nebraska to provide formal training; salaries of trainees attending the training; and the costs of transportation, food, and lodging while attending the classes. It also included the cost of short-term training to prospective foster or adoptive parents by the resource development cost center.

Scope of Audit

The objective of our audit was to determine the allowability and allocability of the \$26.8 million of IV-E training costs claimed and the corresponding FFP claim of \$20.1 million. Our audit covered the period October 1, 1994 through September 30, 1999.

Our audit was conducted in accordance with generally accepted government auditing standards except our audit objective did not require us to review Nebraska's internal control structure.

To accomplish our objective we:

- evaluated costs claimed, in accordance with applicable laws, regulations, state plans, and policy directives;
- reviewed the methods by which Nebraska recorded and allocated training costs;
- tested the FFP rates used in the determination of the amount of federal dollars claimed;
- reviewed title IV-E quarterly cost reports to determine the amount of training costs included therein;
- reviewed the amounts claimed for employee salaries, overhead, travel costs and training costs for prospective foster or adoptive parents;
- obtained the coding records for employee's salaries and identified the employees that were charged to training;
- obtained class rosters to determine whether those employees were actually in a formal training class or were in a follow-on period of probationary work activity;
- reviewed Nebraska's assignment of job titles for the employees charged to training;
- reviewed the title IV-B state plan to determine what training activities were identified as chargeable to the title IV-E program;
- utilized the random moment time studies made by Nebraska during the period of audit to re-allocate salaries not directly chargeable to title IV-E training activities; and
- reviewed methodology for determining the amount of overhead costs charged as direct training costs.

Our audit results were discussed with Nebraska officials. We performed our fieldwork at the Nebraska Health and Human Services System's office in Lincoln, Nebraska.

FINDINGS AND RECOMMENDATIONS

Training costs were overstated because they included costs that were related to non-training activities and costs that did not benefit the title IV-E program. The FFP claim was further overstated due to an erroneous application of an enhanced FFP rate.

Costs that were related to non-training activities totaled \$13,087,557, and included:

- salaries of staff who were not in formal training classes,
- overhead costs relating to staff who were not in training,
- unsupported costs, and
- program costs allocated in error.

For the remaining training costs of \$13,729,706, we found that \$6,178,367 (FFP of \$4,633,775) was not allocable to, and did not benefit, the IV-E program.

Of the remaining costs that did benefit the title IV-E program, \$761,745 of overhead costs were not eligible for the enhanced FFP rate used to compute the federal share of expenditures. This adjustment resulted in a reduction of \$190,436 in allowable FFP.

Our total adjustments of \$19,265,924 resulted in a FFP reduction of \$11,681,442. See Appendix A for more details. Details of our adjustments are discussed in the following paragraphs.

Training Salaries Claimed

Nebraska overstated training salaries claimed by including the salaries for employees who were not in training. Federal regulations allow states to claim an enhanced FFP rate of 75 percent for training in a formal class setting. The employees in question had completed their 17-week formal training class, but were still in a probationary work status. For example, during September 1999, Nebraska charged the costs of 107 employees to the training account when only 21 were in attendance at the formal training classes. The remaining were probationary and regular employees not attending formal classes.

Federal regulations at 45 CFR 1356 state that all training activities and costs funded under title IV-E shall be included in the state agency's training plan for title IV-B. In Nebraska, the approved state IV-B plan does not identify the probationary period as training. Thus, employee costs subsequent to the formal 17-week training period are not allowable at the enhanced FFP of 75 percent for training costs. Such salaries and related overhead are reimbursable to the state at the FFP rate of 50 percent for administration of the IV-E program.

Nebraska indicated that the 6 to 12-month probationary period was considered on-the-job training. However, our analysis indicated that the follow-on probationary period is a work activity with the normal job responsibilities. It is an application of the skills learned in the formal classes. Further, the job designation of "Protection and Safety Worker trainee" was changed to "Protection and Safety Worker" after completion of the formal classes (but while the employee was still in probationary status).

Salaries of employees not in training totaled \$8,414,709. We redistributed these costs between the title IV-E program and state-only programs based on the results of the random moment time studies conducted by Nebraska during the audit period. Based on that distribution, \$3,923,959 is attributable to the IV-E program at the regular 50 percent rate and \$4,490,750 cannot be claimed for FFP, because these employees did not work on IV-E cases. Our adjustment resulted in an FFP reduction of \$4,349,052.

Overhead Relating to Training Salaries

The overstatement of the training salaries also results in an overstatement of allocated overhead costs. These overhead costs were general and administrative costs that were

allocated to all departments. We identified \$4,232,443 of the \$5,617,432 overhead costs as non-training activities due to our adjustments to the training salaries. We allocated overhead costs between non-training of \$4,232,443 and training of \$1,384,989 based on the ratio of direct salaries in each activity.

Further, we allocated the non-training overhead costs between the title IV-E program and state-only programs based on the results of the random moment time studies conducted by Nebraska. Based on that distribution, \$1,992,915 is attributable to the IV-E program at the regular 50 percent rate and \$2,239,528 cannot be claimed for FFP, because these overhead costs relate to salaries of employees not working on IV-E cases. Our adjustment of \$4,232,443 for the non-training resulted in a reduction of \$2,177,874 in claimed FFP.

Reconciliation of Costs

Costs claimed for the audit period did not reconcile to supporting documentation provided by Nebraska. Costs not supported totaled \$384,127 and are considered unallowable for FFP. Our adjustment of \$384,127 results in a FFP reduction of \$288,095.

Program Costs Allocated from the Special Services for Children and Adults Cost Center

Nebraska claimed costs allocated from the Special Services for Children and Adults cost center as title IV-E program costs. This cost center is not related to IV-E training and Nebraska agreed that these costs were allocated to the title IV-E program training in error. Our adjustment of \$56,278 resulted in an FFP reduction of \$42,209.

Allocation of Training Costs to Programs Benefited by the Costs

Training costs were not allocated to all benefiting activities and programs. Nebraska considered all training costs as attributable to the title IV-E program for purposes of reimbursement. However, DCA and ACF staff had requested Nebraska allocate direct training costs between title IV-E and state programs using foster care case counts for each program as the basis for allocation.

The OMB Circular A-87 states that costs are allocable to particular cost objectives only to the extent of the benefits received by such objectives; only allocable costs are allowable; and costs must be reasonable and necessary for proper administration of the program. The ACF issued various policy directives such as Administration on Children, Youth and Families - Information Memorandum 91-15, which state that costs for all training must be allocated among all benefiting programs and may not be a direct-charge to title IV-E, unless it is the only benefiting program.

We identified training costs of \$13,729,706 and distributed those costs using the suggested case count method into \$7,551,339 of costs benefiting the title IV-E program that can be claimed at the enhanced training rate and \$6,178,367 of costs benefiting state programs that cannot be claimed for FFP. Our adjustment of \$6,178,367 resulted in a reduction of \$4,633,775 in claimed FFP.

Indirect Costs Claimed at the Enhanced FFP Rate

Nebraska claimed indirect (general administrative overhead) as training costs at the 75 percent enhanced FFP rate. However, the enhanced FFP rate is not available for indirect costs, based on DAB Decision No. 1530 of the Illinois Department of Children and Family Services. That decision states that general administrative costs --costs not directly identified to training-- such as the costs allocated by the CAP can only be claimed at the 50 percent rate. We identified \$761,745 of overhead costs included in \$7,551,339 of training costs that benefited the title IV-E program. Limiting the FFP rate to 50 percent resulted in an FFP reduction of \$190,436.

Summary

Nebraska reported \$26,817,263 of IV-E training costs and claimed FFP of \$20,112,947, based on the enhanced FFP rate of 75 percent. We identified \$13,087,557 of non-training costs. We redistributed these costs between the title IV-E program and state-only programs and determined that \$5,916,874 is attributable to the IV-E program at the regular 50 percent rate and \$7,170,683 cannot be claimed for FFP. We also identified \$6,178,367 of training costs that did not benefit the IV-E program. The remaining costs of \$7,551,339 benefited the training portion of the title IV-E program. However, \$761,745 of these costs were allocated overhead that is unallowable at the enhanced training FFP. Our adjustments resulted in an FFP reduction totaling \$11,681,442.

RECOMMENDATIONS

We recommend that Nebraska:

- Reduce reported training costs by \$19,265,924 and FFP claimed by \$11,681,442.
- Obtain an agreement with DCA for allocating future training costs.
- Claim only those costs that are allowable according to the training plan for title IV-B.

Nebraska Response

Training Salaries and Overhead related to Training Salaries

Nebraska officials did not concur *with the portion of the audit that contends that probationary employees were not in training, and that such probationary training was*

not part of its IV-B plan. Nebraska contends that the employee's probationary phase constitutes on the job training as it is described in the Five Year Progress and Services Report, an attachment to the IV-B training plan. The Report stated:

New Worker Training was revised to incorporate more field learning ...[T]ools were developed that now are being used to determine the competency level of new employees as they serve their period of probation.

Nebraska acknowledged that the title of the workers changed during 1991 to indicate that they were in the classroom/formal training phase, but that training continued to occur during the probationary period. No evidence was cited to support this assertion.

Allocation of Training Costs

Nebraska disagreed *with the portion of the audit that contends that training costs were not properly allocated.* They contend that the DAB in Decision No 963 (1988) allows them, through an interpretation of OMB Circular A-87, a wide range of methodologies in allocating costs including the methodology of charging all training costs to a single program. In addition, Nebraska requested *the Audit be stayed as the issue regarding the allocation of training cost to IV-E is presently before the Departmental Appeals Board.*

We have paraphrased Nebraska's response. The full text of the reply is included as Appendix B.

OIG Response

Training Salaries and Overhead related to Training Salaries

In their response, Nebraska contended that probationary training was part of the IV-B plan because an attachment to the plan, the Five Year Progress and Services Report, included one sentence describing new worker training. However, the Regional ACF indicated that this specific attachment was submitted after June 30, 1999, precluding any type of approval for the probationary costs. Therefore, it is still our position that the probationary training was not included in the IV-B training plans applicable to our audit period, and, thus, was not approved by ACF. Also, the state plan does not say that "on the job training" is part of any recognized training program or that ACF should pay enhanced reimbursement.

In addition, Nebraska did not specifically disagree with our contention that the probationary period is a work activity with normal job responsibilities. They did mention that the probationary workers are evaluated as to their competency. We believe that this is not unique to an on-the-job situation, but it is a common practice used by employers. Also, Nebraska mentioned that the workers' title was changed to designate when they were in the classroom/formal phase of training. The workers' title was changed from *Protection and Safety Worker* to *Protection and Safety Worker Trainee* indicating that these workers are in training. However, Nebraska did not use this title--designating

training--for workers during the probationary period, which was claimed as training for federal reimbursement.

Allocation of Training Costs

We disagree with the justification used by Nebraska to claim all training costs under IV-E instead of allocating the costs to benefiting programs. Unless the program is the sole beneficiary of the training, it must be allocated to a particular cost objective. Not only is this a requirement of OMB Circular A-87, it is ACF policy and is supported by DAB Decision No. 1530 (1995).

As mentioned, Nebraska is appealing to the DAB the issues relating to this finding. We will not stay this report until the decision is rendered, but the HHS Action official may consider the decision in taking final action concerning our recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "James P. Aasmundstad". The signature is fluid and cursive, with a large initial "J" and "A".

James P. Aasmundstad
Regional Inspector General
for Audit Services, Region VII

Nebraska Health and Human Services System
Foster Care Title IV-E Training Costs
October 1, 1994 through September 30, 1999
A-07-02-00138

Results of Audit

Cost Categories	As Reported	Non-training Activities		Training Activities	
	Claimed 75% FFP	State Programs 0% FFP	IV-E Program 50% FFP	State Programs 0% FFP	IV-E Training 75% FFP
	a +b +c +d	a	b	c	d
Salaries Charged Directly	\$11,406,014	\$4,490,750 ¹	\$3,923,959 ¹	\$1,346,087	\$1,645,218
Allocated Overhead	5,617,432	2,239,528 ²	1,992,915 ²	623,244	761,745 ⁶
Other Direct Expenses	568,932			256,020	312,912
University Contract	8,784,480			3,953,016	4,831,464
Special Services Cost for Children and adults	56,278 ⁴	56,278			
Unsupported Costs	384,127 ⁵	384,127			
Total Costs Claimed	\$26,817,263	\$7,170,683 ⁷	\$5,916,874 ⁷	\$6,178,367 ^{3,7}	\$7,551,339 ³
FFP Claimed (75%)	\$20,112,947	\$5,378,012	\$4,437,656	\$4,633,775	\$5,663,504
FFP Allowed	8,431,505	-0-	2,958,437	-0-	5,473,068
FFP Reduction	\$11,681,442	\$5,378,012	\$1,479,219	\$4,633,775	\$190,436 ⁶
Training Cost Adjustment	\$19,265,924 ⁷				

¹ Nebraska directly charged \$11,406,014 of salaries. However, we identified only \$2,991,305 of salaries that were for training activities. The \$8,414,709 difference was considered non-training activities. We redistributed, using the results of random moment time studies, the \$8,414,709 of non-training salaries into (1) state programs of \$4,490,750 (no FFP) and (2) IV-E program of \$3,923,959 (50 percent FFP). Our adjustments resulted in a \$4,349,052 reduction of claimed FFP.

² Nebraska identified \$5,617,432 of allocated overhead costs to IV-E training. The state claimed 75 percent FFP \$4,213,074. Because of our adjustments to the salaries charged directly, we reallocated the overhead costs using salary ratios to redistribute overhead into non-training and training. The non-training costs were composed of \$2,239,528 for state programs and \$1,992,915 for Title IV-E program (50 percent FFP). These adjustments resulted in a reduction of \$2,177,874 in FFP for non-training costs. The training costs were composed of \$623,244 for state programs and \$761,745 for Title IV-E program (50 percent FFP). Our adjustments for training overhead costs are reflected as partial reductions in notes 3 and 6.

³ Nebraska did not charge training costs to the benefiting programs. We allocated training costs using an estimate of the case count method; the \$13,729,706 of training costs was redistributed to (1) state programs of \$6,178,367 (no FFP) and (2) title IV-E training of \$7,551,339 (75 percent FFP), except for the amount in note 6.

⁴ These costs of \$56,278 were allocated program costs from the Special Services for Children and Adults cost center. Nebraska indicated the costs were allocated in error. Our adjustments resulted in a reduction of \$42,209 in claimed FFP.

⁵ These costs of \$384,127 were unsupported. Our adjustments resulted in a reduction of \$288,095 in claimed FFP.

⁶ Nebraska claimed all allocated overhead costs at 75 percent FFP rather than the allowable 50 percent FFP. We identified \$761,745 of overhead costs that benefited the Title IV-E program. Our limiting the FFP for allocated overhead costs related to Title IV-E training costs to 50 percent resulted in a reduction of \$190,436 in FFP.

⁷ The Training Costs Adjustment was computed by adding (1) the \$7,170,683 and the \$5,916,874 of non-training costs and (2) the \$6,178,367 of training costs not benefiting the Title IV-E program.



Wednesday, July 31, 2002

James P. Aasmundstad
Regional Inspector General for Audit Services
Office of Inspector General
Office of Audit Services
Region VII
601 E. 12th Street
Kansas City, MO 64106

Via Fax and US Mail

RE: #A-07-02-00138

Dear Mr. Aasmundstad:

Please find below the Nebraska Department of Health and Human Services' comments regarding the Draft Audit produced by your office concerning Nebraska's IV-E training costs for the period of October 1, 1994 through September 30, 1999. The Department disputes the OIG's contention that the State IV-B plan does not identify an employee's probationary period as training, and the contention that the Department did not properly allocate training costs. The Department renews its request that this Audit be stayed as the issue regarding the allocation of training costs to IV-E is presently before the Departmental Appeals Board.

Training Salaries and Overhead Related to Training Salaries

First, the Department disagrees with the portion of the audit that contends that probationary employees were not in training, and that such probationary training was not part of its IV-B plan. The Department traditionally has conducted on the job training of its employees during their probationary period. There was a change in title in 1991 to designate those employees in the classroom/formal phase of their training. On the job training continued to occur during the employee's probationary phase as it had prior to the title change.

Further, the probationary phase of training is spelled out in the Five Year Progress and Services Report Title IV-B Child and Family Services Plan. The Plan states that "New Worker Training was revised to incorporate more field learning....[T]ools were developed that now are being used to determine the competency level of new employees as they serve their period of probation." An employee's probationary phase was clearly intended by the Department to be a period of training, and was used as such, therefore, such costs were properly funded by the IV-E program. The Department would ask that you reconsider the your adjustment concerning training salaries claimed resulting in a FFP reduction of \$4,349,052, and the adjustment in Overhead Relating to Training

Salaries resulting in a FFP reduction of \$2,177,874.

Allocation of Training Costs

Second, the Department disagrees with the portion of the audit that contends that training costs were not properly allocated. There is an established method of allocating costs to the primary program. The method stems from the permissive language in the 1981 version of the Office of Management and Budget Circular A-87 (OMB A-87): "A cost is allocable to a particular cost objective to the extent of benefits received by such objective." 46 Fed.Reg. 9548 (1981). The Departmental Appeals Board has interpreted this provision to give an Agency "considerable discretion to determine which of a wide range of methodologies would be 'equitable' including pro rata distribution as well as assignment of costs exclusively to one of the fully benefiting programs." *Oklahoma Department of Human Services*, DAB Decision No. 963 (1988).

Since a language change in 1995 to OMB Circular A-87, there has been an attempt to apply a flat rule that costs must be allocated to all benefiting programs based on ASMB C-10. Subsequent to the 1995 change, Circular A-87 states "A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received." The 1995 revision to the language in the Circular continues to be permissive. The change is a clarification indicating that there should be an inquiry into whether it is possible to quantify or reasonably determine the relative benefits received by one or more programs. On the other hand, the Circular also clarified that if it cannot be reasonably determined what relative benefits have been received by one or more programs it may be appropriate to directly charge the costs to a single program.

The ASMB C-10 has been relied on for the proposition that "Circular A-87 requires that common activities be allocated to all benefiting programs." This statement is an attempt to create a flat rule regarding the permissive language of A-87. Therefore, the statement contained in ASMB C-10 is invalid, as it is an attempt to add a requirement to a duly promulgated regulation without going through the proper notice and comment rulemaking procedures. "[A]n interpretation that is 'additive to the regulation' rather than interpretive, or that spells out a requirement that is 'not fairly encompassed' by the regulation, is a substantive rule change that is invalid unless adopted through notice-and-comment rulemaking." *Paralyzed Veterans of America v. D.C. Arena L.P.*, 117 F.3d 579, 588 (D.C. Cir.1997).

The legal requirements set forth in Title IV-E encourage a method of allocating the training costs entirely to Title IV-E. Legal requirements for IV-E are not met if training does not occur. The costs would be incurred even if the state programs did not exist. Such costs should be allocated to the program that mandates such training. The OMB A-87 permits use of a rational and equitable measure of benefit, such as whether an activity fulfils a legal requirement of a program. There are federal provisions in Title IV-E that require training. "To ensure the availability of essential skills, staff training must be an important element of the State agency's management plan." 45 Fed.Reg. 86817

(1980). The DAB has held "generally, activities required by the statute authorizing a grant program are considered necessary for the administration of the program and can be appropriately allocated to that program." *Oklahoma Department of Human Services*, DAB Decision No. 963 (1988). Clearly in this case training is required by the IV-E program and should be allocated to that program.

Based on the foregoing the Department would request that you reconsider the adjustment concerning the allocation of training costs, and the resulting reduction in FFP of \$4,633,775.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ron Ross', with a stylized flourish extending to the right.

Ron Ross
Director of Nebraska Department of
Health and Human Services

cc: Lloyd Schmeackle (via fax only)
Thomas Suttles (via fax only)
Stephen B. Curtiss