DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

SEP 26 2000

Memorandum

Date

From June Gibbs Brown
Inspector General

Subject Review of Kinship Foster Care Costs Which The New York State Department of Family Assistance Retroactively Claimed to the Emergency Assistance Program (A-02-99-02001)

To Olivia A. Golden
Assistant Secretary
for Children and Families

This is to alert you to the issuance of our final report on September 28, 2000. A copy of the report is attached. The objective of our review was to determine whether kinship foster care costs totaling $16.4 million (Federal share $8.2 million), which the New York State Department of Family Assistance (NYSDFA) retroactively claimed to the Emergency Assistance (EA) program, were allowable for Federal reimbursement.

This audit was conducted in conjunction with our review of New York State's (NYS) Federal maximization program in which we found significant errors with NYS compliance with Federal requirements regarding the eligibility and allowability of retroactive claims. The audit covered the period January 1, 1994 through June 30, 1996.

Our review showed that all 100 sample cases reviewed contained claims that were not allowable for reimbursement under the EA program because:

- Ninety-nine cases included claims for services provided outside the 12-month statutory limit for reimbursement under the EA program.

- One case was missing an authorization form.

Based on our statistical sample, we are recommending that NYSDFA reduce their retroactive claim by $11,667,352 (Federal share $5,833,676) which represents the lower bound of the 90 percent confidence interval.

In comments dated June 14, 2000 , NYS contends that our "finding of unallowability is based upon a misinterpretation of federal standards." We do not agree with the State's position.

Any questions or comments on any aspect of this memorandum are welcome. Please call me or have your staff contact Joseph J. Green, Acting Assistant Inspector General for Administrations of Children, Family, and Aging Audits, at (301) 443-3582.

Attachment

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF KINSHIP FOSTER CARE COSTS WHICH THE NEW YORK STATE DEPARTMENT OF FAMILY ASSISTANCE RETROACTIVELY CLAIMED TO THE EMERGENCY ASSISTANCE PROGRAM

JUNE GIBBS BROWN
Inspector General

SEPTEMBER 2000
A-02-99-02001

Office Of Inspector General
Office Of Audit Services

DEPARTMENT OF HEALTH & HUMAN SERVICES

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

Our Reference: Common Identification No. A-02-99-02001

Mr. Brian J. Wing
Commissioner, Office of Temporary And Disability Assistance
Department of Family Assistance
40 North Pearl Street
16th Floor
Albany, New York 12143

Dear Mr. Wing:

Enclosed are two copies of the U.S. Department of Health and Human Services (HHS), Office of Inspector General, Office of Audit Services' (OAS) final report entitled "Review of Kinship Foster Care Costs Which The New York State Department of Family Assistance Retroactively Claimed to the Emergency Assistance Program." A copy of this report will be forwarded to the action official noted below for 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.

In accordance with the principles of the Freedom of Information Act (Public Law 90-23), 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.)

To facilitate identification, please refer to Common Identification Number A-02-99-02001 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:

Mary Ann Higgins
Northeast Hub Director
Department of Health and Human Services
Administration for Children & Families
26 Federal Plaza, Room 4114
New York, New York 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.

Under Module 3, NYSDFA retroactively claimed FNP foster care costs totaling $13.2 million (Federal share $6.6 million) to the Title IV-A EA program and $1.7 million (Federal share $870,976) to the Title IV-E Foster Care program during the periods April 1, 1996 to December 31, 1997 and July 1, 1996 to December 31, 1997, respectively. In addition, NYSDFA retroactively claimed kinship foster care costs totaling $92.7 million (Federal share $46.4 million) to the Title IV-A EA program during the period January 1, 1994 to December 31, 1997. During our review, the Administration for Children and Families (ACF) disallowed $76.3 million (Federal share $38.2 million) for kinship foster care costs claimed during the period July 1, 1996 to December 31, 1997 which did not meet Federal criteria for timely submission. The ACF deferred the remaining $16.4 million (Federal share $8.2 million) claimed during the period January 1, 1994 to June 30, 1996 because they were unable to determine if the costs were allowable.

In this report, we present the results of our review of the remaining kinship foster care costs, totaling $16.4 million (Federal share $8.2 million), which NYSDFA retroactively claimed to the EA program. Previously, under CIN: A-02-98-02002, we provided you with the results of our review of FNP foster care costs which NYSDFA retroactively claimed to the EA program. In the near future, we will provide you with the results of our review of FNP foster care costs that NYSDFA retroactively claimed to the Title IV-E Foster Care program.

Objective

The objective of our review was to determine whether kinship foster care costs, which NYSDFA retroactively claimed to the EA program, were allowable for Federal reimbursement.

Summary of Findings

Our review showed that NYSDFA and its contractor failed to establish that the costs were eligible for reimbursement under the EA program. Federal reimbursement under the EA program is available for kinship foster care costs provided applicable eligibility criteria are met. Regulations at 45 CFR 206.10 and 45 CFR 233.120 require a written application and authorization for services. Part IV-5214 of the Handbook of Public Assistance Administration further requires that disbursements of assistance payments must be supported by a prior or simultaneous authorization of award. According to officials from ACF, an EA authorization could be used to provide services for a period not to exceed 12 consecutive months. A new authorization would be required to continue EA services beyond the original 12-month period. If claims were made for services provided outside the 12-month authorization period, without a new authorization, the claims for Federal reimbursement would not be allowable.

The NYSDFA provided us with a roster of kinship foster care cases, totaling $19,915,908 (Federal share $9,957,954), which contained costs claimed for Federal reimbursement as well as costs which had not been claimed for Federal reimbursement during the period January 1, 1994 to June 30, 1996. The NYSDFA was unable to reconcile the claimed amount of $16,413,460 to this roster, or provide us with a separate roster which represented the claimed amount. Using the roster provided to us, we reviewed a statistical sample of 100 cases totaling $1,450,368 (Federal share $725,184) and found that all 100 cases contained costs that were not allowable for Federal reimbursement under the EA program as follows:

- 99 cases contained costs which were unallowable because they represented services provided outside the 12-month statutory limit for reimbursement under the EA program.

- One case was missing an authorization form.

The total amount questioned for 100 cases with errors was $1,229,284 (Federal share $614,642). As a result, we estimate that NYSDFA retroactively claimed between $11,667,352 (Federal share $5,833,676) and $15,381,162 (Federal share $7,690,581) to the Federal Government for kinship foster care costs that were unallowable for funding under the EA program. The midpoint of the confidence interval amounted to $13,524,257 (Federal share $6,762,129).

Recommendation

Since ACF deferred these claims, we recommend that NYSDFA reduce their retroactive claim by $11,667,352 (Federal share $5,833,676) which represents the lower limit of the 90 percent confidence interval.

Auditee Comments

In comments dated June 14, 2000 (see Appendix B), NYS officials indicated that $5,833,676 in claims we believe were unallowable for funding under the EA program was based on our misinterpretation of Federal standards. More precisely, the State officials contend that the Handbook of Public Assistance Administration cannot be used as a basis for disallowing the types of claims at issue in the audit review. Additionally, the State asserted that the audit report adopts an interpretation which unreasonably circumscribes the duration of EA authorizations and is inconsistent with the manner in which the program has been administered by the Department of Health and Human Services.

OIG Comments

We disagree with the State's position. Our interpretation and application of EA policies was coordinated with ACF to ensure the appropriate criteria was used. However, we will forward NYS's concerns for ACF review and resolution.

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INTRODUCTION

Background

The Emergency Assistance (EA) program, established by the 1967 amendments to the Social Security Act (Public Law 90-248) as an optional supplement to the Aid to Families with Dependent Children (AFDC) program, was a federally sponsored State-administered program. The purpose of the EA program was to provide temporary financial assistance and supportive services to eligible families experiencing an emergency. On August 22, 1996, the Temporary Assistance for Needy Families (TANF) program replaced the former AFDC program. Under TANF, States receive a block grant allocation, and there is no longer a Federal entitlement.

Section 233.120 of 45 CFR states that EA services can only be provided to or on behalf of a needy child under the age of 21 and any other member of the household in which: (1) such child is living (or has been living in the prior 6 months) with a specified relative, (2) the child is without available resources to meet the emergency, (3) the assistance is necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and (4) the destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment.

In addition, 45 CFR 206.10 and 45 CFR 233.120 require a written application and authorization for services. Part IV-5214 of the Handbook of Public Assistance Administration further requires that disbursements of assistance payments must be supported by a prior or simultaneous authorization of award.

The NYSDFA and its local social services district in New York City are responsible for placing children in need of protection into foster care. In 1986, NYSDFA decided to make a more concerted effort to place children who were in need of foster care with relatives. This practice was referred to as "kinship placements." To the extent such relatives met foster care parent requirements, they were considered preferred foster parents.

Under title IV-E of the Social Security Act, Federal matching of State foster care maintenance payments is available for children in kinship foster care. In order to claim reimbursement from the Title IV-E Foster Care program, the child must meet eligibility requirements. One of the eligibility requirements was that the child be physically removed from the home of a specified relative within 6 months prior to the initiation of court proceedings that determined that continuation therein would be contrary to the welfare of the child.

The ACF has taken the position that for kinship foster care children that fail the Title IV-E physical removal requirement, foster care maintenance costs would be allowable for Federal reimbursement under the EA program provided Title IV-A 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

OAS Common Identification Number	Type of Cost	Retroactive Transfer To	Gross Claim	Federal Share	Period of Claims
A-02-98-02002	FNP Foster Care	Title IV-A (EA)	$13.2 million	$6.6 million	4/1/96 - 12/31/97
A-02-98-02004	FNP Foster Care	Title IV-E (Foster Care)	$1.7 million	$870,976	7/1/96 - 12/31/97
A-02-99-02001	Kinship Foster	Title IV-A	$92.7	$46.4	1/1/94 - 12/31/97

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.

Under Module 3, NYSDFA retroactively claimed kinship foster care costs totaling $92.7 million (Federal share $46.4 million) to the Title IV-A EA program during the period January 1, 1994 to December 31, 1997. During our review, ACF disallowed $76.3 million (Federal share $38.2 million) for kinship foster care costs claimed during the period July 1, 1996 to December 31, 1997 which did not meet Federal criteria for timely submission. The ACF deferred the remaining $16.4 million (Federal share $8.2 million) claimed during the period January 1, 1994 to June 30, 1996 because they were unable to determine if the costs were allowable.

Objectives, Scope and Methodology

The primary objective of our review was to determine whether kinship foster care costs, which NYSDFA retroactively claimed to the EA program, were allowable for Federal reimbursement.

To accomplish our objective, we:

- Examined applicable EA regulations, ACF action transmittals and information memorandums, State administrative directives, the State plan, and State regulations.

- Met with representatives of the State and IHHS to obtain an understanding of the following:

  A. The State's procedures for review and approval of retroactive EA claims.

  B. The IHHS responsibilities for the development of the retroactive EA claims as identified by the terms of its subcontract.

- Consulted with ACF officials to obtain clarification of the regulations.

- Used simple random sampling techniques to select a sample of 100 cases totaling $1,450,368 (Federal share $725,184) from the roster of kinship foster care cases totaling $19,915,908 (Federal share $9,957,954).

- For each of the 100 sample cases selected, we reviewed documentation contained in IHHS's case files to determine if the kinship foster care costs were allowable for Federal reimbursement under the EA program. In addition, since NYSDFA was unable to identify which cases in this roster were included in their $16,413,460 claim, we multiplied the dollars found in error by .8241, the overall ratio of dollars claimed by NYSDFA ($16,413,460) to dollars in the roster provided ($19,915,908). We have no reason to believe that the cases claimed and unclaimed differed in any way. Appendix A contains the details of our sampling methodology.

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 EA claims. Rather, we relied upon substantive audit testing. Our field work was performed during the period March 1999 to June 1999.

FINDINGS AND RECOMMENDATION

Our review showed that NYSDFA and its contractor failed to establish that costs claimed were eligible for reimbursement under the EA program. We found that all 100 cases contained deficiencies related to the authorization of services.

Authorization of Services

Based on our review, we determined that 99 of the 100 sample cases contained costs which were unallowable for Federal reimbursement because they represented services which were provided outside the 12-month service period. In addition, we determined that one sample case was missing an authorization form altogether.

According to 45 CFR 233.120(b)(3):

> "Federal matching is available only for emergency assistance which the State authorizes during one period of 30 consecutive days in any 12 consecutive months, including payments which are to meet needs which arose before such 30-day period or are for such needs as rent which extend beyond the 30-day period."

In addition, Part IV-5214 of the Handbook of Public Assistance Administration states that all disbursements of assistance payments must be supported by a prior (or simultaneous) authorization of award. And, House Committee Report Number 544, 90th Congress, 1st Session 109 (1967) states that "the payment of services must be necessary in order to meet an immediate need that would otherwise not be met."

According to ACF, an EA authorization could be used to provide services for a period not to exceed 12 consecutive months. A new authorization was required to continue EA services beyond the original 12-month period. Claims made for services provided outside this 12-month service period, without a new authorization, are not allowable. However, NYSDFA has interpreted the Federal regulations to mean that an authorization for EA services can be used to claim the cost of services provided until the emergency is alleviated, even if the emergency extends beyond 12 months.

Under Module 3, the State identified cases that already had existing EA authorizations which were completed before the kinship foster care services were provided. The IHHS was instructed to link the kinship foster care costs to that authorization (emergency). Once this link was made, all costs associated with that emergency, even costs which extended beyond the 12-month period, were to be included in the claim. In accordance with ACF's guidance, we allowed claims for services provided for 12 months subsequent to that authorization and questioned all costs

claimed outside this period.

For cases which did not have an existing EA authorization form, IHHS was responsible for securing this authorization from local district officials. Since IHHS was attempting to retroactively document allowability, these authorization forms were often signed by local district officials from 6 months to 2 years after the kinship foster care services were provided. For cases where IHHS secured the authorization from local district officials subsequent to the period that the costs were incurred, we allowed 12 months prior to the authorization date and questioned all costs claimed outside this period.

We determined that 99 of the 100 sample cases contained costs which were unallowable for Federal reimbursement because they represented services which were provided outside the 12-month service period. In addition, we determined that one sample case was missing an authorization form altogether. The total amount questioned for these 100 cases was $1,229,284 (Federal share $614,642).

Conclusions and Recommendation

Based upon our review, we determined that NYSDFA and its contractors failed to establish that the preponderance of retroactively claimed kinship foster care costs were eligible for Federal reimbursement under the EA. The total amount questioned for 100 errors was $1,229,284 (Federal share $614,642). As a result, we estimate NYSDFA claimed between $11,667,352 (Federal share $5,833,676) and $15,381,162 (Federal share $7,690,581) to the Federal Government for kinship foster care costs that were unallowable for funding under the EA program. The midpoint of the confidence interval amounted to $13,524,257 (Federal share $6,762,129). Our tests were based on simple random sampling techniques and the ranges shown have a 90 percent level of confidence with a sampling precision as a percentage of the midpoint of 13.73 percent.

Since ACF deferred these claims, we recommend that NYSDFA reduce their retroactive claim by $11,667,352 (Federal share $5,833,676) which represents the lower limit of the 90 percent confidence interval.

NYS Comments

In comments dated June 14, 2000, NYS officials indicated that $5,833,676 in claims we believe were unallowable for funding under the EA program was based on our misinterpretation of Federal standards. More precisely, the State officials contend that the Handbook of Public Assistance Administration cannot be used as a basis for disallowing the types of claims at issue in the audit review. Additionally, the State asserted that the audit report adopts an interpretation which unreasonably circumscribes the duration of EA authorizations and is inconsistent with the

manner in which the program has been administered by the Department of Health and Human Services.

The complete text of the NYS comments is presented as Appendix B to this report.

OIG Comments

We disagree with the State's position. Our interpretation and application of EA policies was coordinated with ACF to ensure the appropriate criteria was used. However, we will forward NYS's concerns for ACF review and resolution.

STATISTICAL SAMPLING INFORMATION

Population (Cases)	Population (Dollars)	Sample Size (Cases)	Sample Size (Dollars)	Sample Errors (Cases)	Sample Errors (Dollars)
1,335	$19,915,908	100	$1,450,368	100	$1,229,284

Projection of Sample Results
(Precision At The 90 Percent Confidence Level)

	Cases Claimed & Unclaimed	Cases Claimed (1)
Upper Limit	$18,664,194	$15,381,162
Point Estimate	$16,410,942	$13,524,257
Lower Limit	$14,157,690	$11,667,352

(1) We multiplied the projected dollars in error for all Cases Claimed and Unclaimed by .8241, the overall ratio of dollars claimed by NYSDFA ($16,413,460) to dollars in the roster provided ($19,915,908).

(2) The Federal reimbursement rate of the Emergency Assistance program is 50 percent.

HHS/OIG
OFFICE OF AUDIT
NEW YORK REGIONAL OFFICE
JUN 19 2000

George E. Pataki
Governor

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
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Brian J. Wing
Commissioner

RECEIVED

June 14, 2000

Re: Draft Audit Report:
A-02-99-02001

Dear Mr. Horgan:

This is in response to your letter regarding the above-referenced draft report entitled "Review of Kinship Foster Care Costs Which the New York State Department of Family Assistance Retroactively Claimed to the Emergency Assistance Program."

In the subject report, the auditors determined that $2,373,054 of the $8,206,730 in claims submitted by the State are allowable. The remaining $5,833,676 in claims were found to be unallowable for funding under the Emergency Assistance ("EA") program. The State maintains that the finding of unallowability is based upon a misinterpretation of federal standards. More precisely, the State contends that the Handbook of Public Assistance Administration cannot be used as the basis for disallowing the types of claims at issue in the audit review. Additionally, the State asserts that the audit report adopts a new interpretation which unreasonably circumscribes the duration of EA authorizations and is inconsistent with the manner in which the program has been administered by the Department of Health and Human Services.

Thank you for the opportunity to respond to the above-referenced draft audit report.

Sincerely,

Brian J. Wing

Mr. Timothy Horgan
Regional Inspector General
For Audit Services
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