



National Judicial Opioid Task Force

New Federal Funding Source for Court-Appointed Counsel in Child Protection Cases

Major Policy Change

Inadequate legal representation for both parents in the child welfare system due to substance use disorder and their children can have a profound effect on the parties' experience of the court system and the information available to the court. Quality legal representation for parents and children in child welfare cases leads to more engaged families, better judicial decision-making, and greater access to services for parents struggling with substance use disorder. A recent ABA Infographic (https://www.americanbar.org/content/dam/aba/administrative/child_law/cwrepinfographic.pdf) provides an

overview of the benefits and characteristics of quality legal counsel in child welfare cases. It also lists ideas for judicial activities that can enhance the quality and availability of representation.¹

A recent change in policy from the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services, for the first

welfare agency was removed in January 2019 and replaced with new guidance. The added provision specifies that Title IV-E funds are available to cover 50% of the cost of appointed counsel for eligible children and their parents in juvenile dependency cases. The guidance makes clear the intended outcomes of this change:

This change in policy will ensure that, among other things: reasonable efforts are made to prevent removal and finalize the permanency plan; and parents and youth are engaged in and complying with case plans.

The bulk of child welfare funding under the Title IV-E entitlement goes toward funding placements for children in out-of-home care. States also draw down Title IV-E funds for expenditures "necessary for the proper and efficient administration of the Title IV-E plan." By this policy change, Title IV-E administrative funds will now be available to cover part of the cost of providing attorneys for parents and children in juvenile dependency cases.

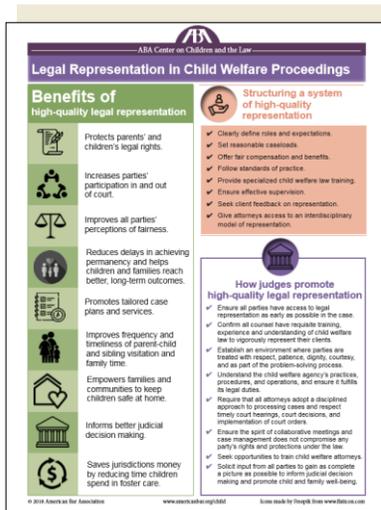
Emphasis on Quality Legal Counsel

The new policy is consistent with the Children's Bureau's recent efforts to promote quality legal representation for all parties in dependency cases. Title IV-E administration funds have been available to provide legal counsel for the child welfare agency in the past. By expanding funding to counsel for parents and children, the federal government endorses the principle that quality legal representation for all parties is essential to a well-functioning child welfare system.

time will allow states to access federal matching funds to provide legal counsel to parents and children in juvenile dependency cases. A long-standing statement in the Children's Bureau Child Welfare Policy Manual that expressly limited federal funding (under Title IV-E of the Social Security Act) to legal representation for the child

¹ One of the Key Principles underlying The Enhanced Resource Guidelines of the National Council of Juvenile and Family Court Judges, released in 2016, is that "Judges are responsible for ensuring that

parties, including each parent, are vigorously represented by well-trained, culturally responsive, and adequately compensated attorneys...."



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In 2017, the Children’s Bureau released a detailed Information Memorandum to all child welfare agencies, tribes, state courts, and Court Improvement Programs on High Quality Legal Representation for All Parties in Child Welfare Proceedings. In addition to strategies and best practices to improve attorney practice in dependency cases, the memo cites research showing substantive and procedural outcomes resulting from improved legal representation, including:

- Increases in party perceptions of fairness;
- Increases in party engagement in case planning, services, and court hearings;
- More personally tailored and specific case plans and services;
- Increases in visitation and parenting time;
- Expedited permanency; and
- Cost savings to state government due to reductions of time children and youth spend in care.

New research published in 2019 showed that an interdisciplinary approach to parent representation employing social workers and parent advocates to support in-house staff attorneys achieved substantially better outcomes compared to panel attorneys largely working on their own. The study examined child welfare administrative data for more than 18,000 children in the New York City Family court. Children in foster care whose parents received representation by the interdisciplinary law office spent, on average, 118 fewer days in care than children whose parents received panel attorney representation. The children whose parents were represented by the law office also achieved overall permanency, reunification, and guardianship more quickly.

The Title IV-E policy change presents an opportunity for jurisdictions to consider implementing an interdisciplinary law office or other innovative practice changes with newly available resources. For jurisdictions that do not currently provide legal representation for all indigent parents and/or children in the system, there will now be a new federal source of support.

Working with the Child Welfare Agency to Claim Title IV-E Funds

It is important to note that only the state child welfare agency may claim reimbursement from the federal government for the cost of appointed counsel. Thus, to access the federal funds, the judicial or executive branch entity that administers court-appointed counsel funding must work with the Title IV-E agency to design a protocol that transmits the information necessary for the claim to the Title IV-E agency while preserving the independence and integrity of the legal representation system. The Children’s Bureau-funded state Court Improvement Program should be able to provide technical assistance for the judicial branch and connections to appropriate child welfare agency contacts as needed in this effort.

The new Policy Manual change specifies that costs of “independent legal representation” by attorneys for entitled children and attorneys for their parents qualify for reimbursement. Further, the funding is intended to support the attorneys’ preparation for and participation in “all stages of foster care legal proceedings.” Therefore, the system developed to access Title IV-E funds should preserve the independence of parents’ and children’s attorneys from any influence by the agency on their practice and should ensure that the representation covers all stages of the case.

The technical aspects for claiming Title IV-E administrative funds are complex and beyond the scope of this paper. While the federal policy change opens up an important entitlement for a significant population of children in juvenile dependency cases and their parents, the federal funding will not cover representation for all children in foster care proceedings. The proportion of children and parents whose representation costs are eligible for reimbursement will vary by state, depending on the proportion of children in foster care eligible for Title IV-E (known as the Title IV-E “coverage” or “penetration” rate). Title IV-E eligibility is determined by a formula “neediness” determination based on 1996 Aid to Families with Dependent Children (AFDC) criteria.

Mark Hardin's *ABA Child Law Practice* article, cited in the resources below, provides an excellent guide to the Title IV-E claiming process specifically designed to help courts and legal organizations work with child welfare agencies to access this new federal resource. The article outlines a sample protocol that could be documented in a memorandum of understanding or other agreement:

1. The public entity providing legal representation of parents or children documents its costs to the state agency administering Title IV-E;
2. The Title IV-E agency includes the sum in its larger claim to the federal government for Title IV-E matching funds;
3. The federal government pays the matching funds to the Title IV-E agency; and then
4. The Title IV-E agency disburses to the legal representation program its proportionate share.

Hardin also notes some important issues to consider in approaching the child welfare agencies for partnership in this effort:

1. How can we highlight the improved outcomes for children and families that arise from increased investments in child and parent counsel?

2. What different models of agreements with the Title IV-E agency may be best in your state?
3. What is the process to collect and disburse the funds?
4. How can we ensure the new funds are used to augment not supplant existing state and county investments in child and parent counsel?
5. How can we use the new funds as a catalyst for systemic improvements in representation, including models of multidisciplinary representation (attorney, social worker, investigator, peer advocate) and pre-petition representation? (Note that the costs of social workers to assist attorneys for parents and children can't be included in claims for Title IV-E administrative costs.)

The Children's Bureau policy change to allow the use of Title IV-E funds for funding 50% of the cost of legal representation for a substantial portion of children and parents in child protection cases is monumental. Courts and their partners should develop strategies to leverage this opportunity to improve and expand (or in some jurisdictions, begin) legal representation for children and parents in juvenile dependency cases.

Selected References

Children's Bureau, Administration for Children and Families, United States Department of Health & Human Services, *Child Welfare Policy Manual, Section 8.1B TITLE IV-E, Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program*. https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=36.

Family Justice Initiative, *Questions and Answers: Federal IV-E reimbursement for high-quality legal representation for children and parents*. <https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2019/06/IVE-Questions-and-Answers-re-Legal-Representation-FINAL-6-13-19.pdf>.

Gatowski, S., Miller, N., Rubin, S., Escher, P., and Maze, C., *Enhanced resource guidelines: Improving court practice in child abuse and neglect cases*. Reno, NV: National Council of Juvenile and Family Court Judges (2016). <https://www.ncjfcj.org/EnhancedResourceGuidelines>.

Gerber, Pang, Ross, Guggenheim, Pecora, and Miller, *Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, 102 *Children and Youth Services Review* 42 (2019). <https://www.sciencedirect.com/science/article/pii/S019074091930088X>.

Hardin, *Claiming Title IV-E Funds to Pay for Parents' and Children's Attorneys: A Brief Technical Overview*, *Child Law Practice* (ABA, 2018). [https://www.americanbar.org/groups/child_law/resources/child_law_practiceonline/january---december-2019/claiming-title-iv-e-funds-to-pay-for-parents-and-childrens-attor/?q=&fq=\(id%3A%5C%2Fcontent%2Faba-cms-dotorg%2Fen%2Fgroups%2Fchild_law%2F*\)&wt=json&start=0](https://www.americanbar.org/groups/child_law/resources/child_law_practiceonline/january---december-2019/claiming-title-iv-e-funds-to-pay-for-parents-and-childrens-attor/?q=&fq=(id%3A%5C%2Fcontent%2Faba-cms-dotorg%2Fen%2Fgroups%2Fchild_law%2F*)&wt=json&start=0).

Selected References (cont.)

Infographic: *Legal Representation in Child Welfare Proceedings* (ABA, 2018).

https://www.americanbar.org/content/dam/aba/administrative/child_law/cwrepinfographic.pdf.

Kelly, *Trump Administration Rule Change Could Unleash Hundreds of Millions in Federal Funds to Defend rights of Parents, Children in Child Protection Cases*, Chronicle of Social Change² (February 5, 2019). <https://chronicleofsocialchange.org/child-welfare-2/how-the-fight-for-family-legal-support-was-won/33631>.

Moore, *New Funding for Counsel Now, Big Child Welfare Savings Later*, Chronicle of Social Change (February 20, 2019).

<https://chronicleofsocialchange.org/child-welfare-2/new-funding-for-counsel-now-big-child-welfare-savings-later/33894>.

Sankaran, *An Invitation to Remake Child Welfare*, Chronicle of Social Change (January 3, 2019). <https://chronicleofsocialchange.org/child-welfare-2/federal-government-invitation-to-remake-child-welfare/33319>.

Sankaran, *Grasping the Opportunity to Remake Child Welfare*, Chronicle of Social Change (January 7, 2019).

<https://chronicleofsocialchange.org/top-stories/how-states-can-seize-new-legal-funding-federal-government/33321>.

Training and other resources on the National Association of Counsel for Children website, including information for attorneys on becoming certified as Child Welfare Law Specialists. <https://www.naccchildlaw.org/default.aspx>.

Webinar: *A New Era of Funding Social Justice*, Chronicle of Social Change (February 26, 2019) (recording and slide presentation).

<https://chronicleofsocialchange.org/youth-services-insider/webinar-recording-a-new-era-of-funding-family-justice/34059>.



² Chronicle of Social Change references may require a subscription.