Volume 2 Number 1

Child Welfare

NEW YORK STATE

Unified Court System • Division of Court Operations
Office of Alternative Dispute Resolution and Court Improvement Programs

Court Improvement Project

Best Practices Bulletin

THE CHILD WELFARE COURT IMPROVEMENT PROJECT

INSIDE THIS ISSUE

2 One Child Equals One Permanancy Goal

3 Findings and TImings

3 Commom Title IV-E Errors—New York State's Dress Rehearsal

4 Engage in a Court Self-Audit

Get the Facts on the Role of the Court in the Title IV-E Eligibility Review

Fact: NYS passed a federal review of child welfare cases in August of 2006.

In August 2006, NYS passed an initial primary review of child welfare cases with an error rate of 8.67%. "The audit reviewed cases from several counties across the state and allowed for a 10% error rate. Title IV-E of the Social Security Act (42 U.S.C. §§ 671-679b) is an important funding stream for foster care costs. It provides for federal reimbursement for a portion of the maintenance and administrative costs of foster care for children who meet specified federal eligibility requirements. In New York, the federal share is currently 56.2%. These federal funds help offset the State and local costs of providing foster care to children.

The Administration for Children and Families (ACF) of the federal Department of Health and Human Services is required to conduct Foster Care Eligibility Reviews (FCER) every three years of a random sample of cases to determine whether the foster care costs charged to the federal Title IV-E program are appropriate.[1] The standards outlined in Title IV-E fall into two major categories: eligibility determinations and documented court findings. Eligibility determinations are primarily based upon securing documentation at the time of initial placement that the child was Aid for Dependent Children eligible at the time of removal. This assessment is made by the social services district and should be maintained as necessary throughout the placement. Not all foster children are eligible for Title IV-E reimbursement.

Fact: New York State undergoes a Second Primary Eligibility Review in 2009.

Due to the fact that New York passed the initial primary eligibility review in 2006, ACF conducted a second primary eligibility review of New York State in August of 2009. If at the completion of the second primary eligibility review the state is determined not to be in substantial compliance, the State will be required to submit a program improvement plan (PIP) to the federal government containing strategies for remedying the deficiencies. In addition, federal disallowances are taken for the sample cases that are found to be out-of-compliance. The PIP provisions must be implemented within one year (unless state legislation is required) at which time the State will undergo a secondary eligibility review. This review will sample a substantially larger number of cases (150) for compliance. A review determination that a state is not in substantial compliance at the completion of a secondary eligibility review may result in a disallowance related to the state's entire Title IV-E claims.[2]

The Second Primary Eligibility Review for New York was scheduled for August 31 to September 4, 2009. The random sample of cases has been drawn from the Adoption and Foster Care Analysis and Reporting system (AFCARS). There is a six month window of cases from which the cases are selected. This is called the Period under Review (PUR). For New York's second primary review, the PUR is from October 1, 2008 to March 31, 2009. What this means is that any case where a child was in care and was reported to be eligible for federal Title IV-E money from October 1, 2008 to March 31, 2009 is eligible to be selected and reviewed. The sample will consist of 80 cases, and the threshold for achieving compliance is a 5% error rate (four or fewer cases).

Continued on page 2

1. www.ocfs.state.ny.us/main/fostercare/titleiv-e/chapter3.asp;
2. Id.

 (*continued from page 1*)

Fact: Family Court judges are required to make case specific findings and issue Orders that are IV-E compliant.

Title IV-E requires specific documentation of court findings at the initial removal hearing as well as at permanency hearings. These requirements are also codified in State legislation in the Family Court Act and Social Services Law. Evidence of specific documentation of court findings can only be proved from two sources: 1. original, unaltered or amended, court orders; or 2. the transcript of the hearing. It's important to note that the federal government will not accept *nunc pro tunc* orders, or a reissued or amended order, to verify or document required findings.

Best practice in this area requires the use of the OCA court forms, and making sure that all orders have the required language prior to signing and entry. Additionally, all required findings should be made on the record. The order is the preferred source of documentation.

Title IV-E requires specific judicial findings of "reasonable efforts" and "contrary to the welfare" at designated stages in the court process. Removal hearings, approvals of voluntary placements and permanency hearings are all judicial episodes which require specific findings. In addition, the timing of issuing these findings is statutorily prescribed.

Fact: Collaboration generates success.

The fact that New York State passed the initial primary eligibility review was due to the joint efforts of the NYS Office of Children and Family Services, local social services districts, the Office of Court Administration and Family Courts across the state. We all worked together to review cases before they were subject to federal review, correct practice errors and participate in ongoing training and technical assistance. With the level of commitment that New York has displayed toward achieving substantial compliance, we welcome this review. ■

One Child = One Permanency Goal

Each child in foster care can only have one permanency goal in order to be eligible for Title IV-E reimbursement. However, federal and state law requires that in addition to a permanency goal, each child in foster care has a specified concurrent plan in the event that the permanency goal cannot be achieved.

This has caused quite a bit of confusion around the state. Mock reviews revealed cases where orders reflect two permanency goals or alternate permanency goals. Neither of these types of orders allows for the local social service district to request and receive their share of federal reimbursement for these cases during the time that the dual or alternate goals are in place. The result is that the locality is absorbing the entire foster care cost for those cases.

Concurrent planning is an important element in ensuring timely permanency for children and while there is no prescribed mandate that court orders reflect these concurrent plans, many judges openly discuss and review these plans with casework staff and families. Reviewing a child's permanency goal as well as the child's concurrent plan is a best practice and consistent with the oversight role that the Adoption and Safe Families Act (ASFA) created for Judges. Ensuring that the order properly reflects the child's one primary permanency goal is an essential judicial function. ■

Some Examples:

Ineligible	Eligible
The child's permanency goals are reunification and adoption.	The child's permanency goal is reunification and the concurrent plan for the child is adoption.
The child's dual goals are placement with a fit and willing relative and adoption.	The child's permanency goal is placement with a fit and willing relative and should that goal not be achieved, the child's concurrent plan is adoption.
The child's goal is either APPLA or adoption.	The child's permanency goal is adoption and the concurrent plan is APPLA; if adoption cannot occur there would be no other appropriate permanency goal for the child.

Common Title IV-E Errors: New York State's Dress Rehearsal

In preparation for the second primary eligibility review pursuant to Title IV-E of the Social Security Act, NYS Office of Children and Family Services (OCFS) conducted a mock review of randomly selected cases. They called this process the "Dress Rehearsal." Upon completion of the Dress Rehearsal, OCFS identified the most common issues involving court orders within the case files submitted for review. The first area identified was with the actual condition or appearance of court orders. Orders were:

- missing pages
- missing the judge's signature
- illegible due to poor quality (photocopies) or
- entirely missing.

Each of these could create a payment issue if Title IV-E was claimed.

The second area identified with respect to court orders was content-specific. According to John Stupp, Chief Attorney of the NYS OCFS Legal Division, the following are examples of errors noted to Court orders in the dress rehearsal:

- Orders to Show Cause executed directing removal of a child from the home without a contrary to the welfare (best interest) finding in the order.
- A voluntary Placement Agreement ordered without approval of the Department of Social Services.
- Late finding of reasonable efforts to finalize a permanency goal.
- Orders directing removal from a relative with legal custody of the child under FCA § 1017 without a finding of contrary to the welfare (best interests) or reasonable efforts to prevent the removal.
- Approving voluntary placement agreements from non-parent custodians (must be a parent or legal guardian).
- Dual or alternative permanency goals.

Stupp stated, however, that progress is being made. "I am finding that the 2005 changes in State law dealing with ongoing court jurisdiction in Article 10 cases and the mandate for more frequent permanency hearings are aiding compliance," he said. "As usual, those counties that use the OCA forms are in [a] better position to comply." ■

Findings and Timings

Initial Removal

The first order that places a child in out of home care must contain a finding that remaining in the child's home is "contrary to the welfare of the child" or that "continuing in the child's home is not in the child's best interest." In addition, a reasonable efforts determination regarding the efforts made to prevent the removal must be made within 60 days of a child's removal from his or her home. This finding can be made at the initial removal, and best practices suggest this procedure will help to ensure this step is not missed.

Approval of a Voluntary Placement Agreement

When approving a voluntary placement agreement, a judicial finding needs to be made that the placement of the child into foster care is in the child's best interest. This finding must be made 180 days after the execution of the voluntary placement agreement. Best practice dictates making that finding upon the approval. If that approval goes on beyond one court appearance, it is recommended the court track the 180 days in order to not miss the deadline. It should be additionally noted that voluntary placement agreements that are approved from non-parent custodians will not be Title IV-E eligible. Title IV-E only allows voluntary placements agreements to be reimbursed if taken from a parent or legal guardian.

Permanency Hearings

At the Permanency Hearing, a determination that reasonable efforts to finalize the permanency plan must be made and documented in a court order. Title IV-E states that a judicial determination that reasonable efforts have occurred in furtherance of the child's permanency plan must be made within 12 months of the child's entry into care (either the date of the court's finding of abuse or neglect or 60 days after the removal of the child from his or her home – whichever comes first) and every 12 months thereafter. New York State law requires that the initial permanency hearing be commenced no later than 8 months from the date or removal and that subsequent hearings be held within 6 months of the completion of the prior permanency hearing. Careful compliance with NYS law will ensure that no case ever exceeds the 12-month Title IV-E mandate. However, if no finding is made within 12 months of the prior finding, Title IV-E eligibility is suspended until such finding is made. ■

Best Practice Efforts to Improve Compliance

Engage in a Court Self-Audit

Improved practices in the 7th Judicial District are the result of annual IV-E self-audits These were initiated well before the 2006 federal audit, under the direction of the Honorable Craig J. Doran, Supervising Judge of the Family Courts of the 7th Judicial District, and supported by the work of Mary Aufleger, Child Welfare Court Improvement Project Liaison to the Seventh District. These annual reviews also have resulted in collaborative discussions with human services agencies in the counties that comprise the 7th JD to ensure that findings are made and documented in each case.

Below is the Review Procedure followed in the 7th JD:

1. Family Court Supervising Judge appoints a court team to review files at each of the District Family Courts. The team will assist the chief clerk in preparing for the review process.
2. Supervising Judge sends a letter out to chief clerks informing them of the upcoming review and to extend full cooperation to the members of the team.
3. The team sends out a letter to the chief clerks with a scheduled date for their county review. The letter includes the requested files to pull for the review; case types, number of cases and time periods. Equal numbers of files are pulled for each judge who is hearing remand/permanency cases where the child has been placed out of the home.
4. The team completes data forms designed to document case specific findings for each case reviewed. The review team's goal is to collect information identifying requisite case-specific Best Interest, Reasonable Efforts findings and the timeline for Articles 10, 3, and 7 case types.
5. The team visits each Family Court to conduct the review process, documenting the findings for each requested file.
6. Following the team's review and documentation of court order compliance with IV-E eligibility requirements and ASFA, the team then meets with the chief clerk, county law representative, department of social services, and others to discuss the findings.

Initiate a Multidisciplinary Case Audit

As part of ongoing collaborative work in Erie County, the Child Welfare Court Improvement Project (CWCIP) partnered with the Buffalo Regional Office of the NYS Office of Children and Family Services (OCFS) to conduct monthly case file reviews in Erie County for compliance with Title IV-E standards. Cases pulled for these reviews were identified by random selection by OCFS or by Erie County Department of Social Services (DSS) IV-E analysts who identified specific types of cases more prone to a specific type of error; for example, cases for children who entered care prior to 2007 or cases with concurrent PINS petitions. In these instances, the group is not only charged with rooting out any error cases but also looking at practice across a case segment and making recommendations to ensure that IV-E issues are not overlooked. The group includes the OCFS IV-E Specialist, CWCIP liaison, and various DSS administrative staff and uses the federal audit tool as the basis for their review.

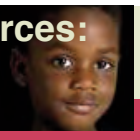
This group has facilitated "group audits" of cases in order to train DSS unit supervisors to perform self-audits of cases within their unit and to improve their individual capacity for fixing errors before they become permanent.

Sponsor Multidisciplinary Training Provided by Child Welfare Court Improvement Project

Utilizing the excellent tools developed and disseminated by the NYS OCFS legal staff, CWCIP has planned and presented training entitled Ensuring IV-E Eligibility: making the case for eligibility in the court orders and the courtroom for more than 75 Judges, Court Attorney Referees, Child Welfare Attorneys and supervisory caseworkers in the 8th Judicial District. This training outlines the compliance areas highlighted in this article and shares the tips and examples prepared by OCFS to ensure good practice.

For more information, please contact your CWCIP liaison or Christine Kiesel at ckiesel@courts.state.ny.us

Resources:



Children's Bureau Publication Provides Timely News on Child Welfare Issues

Children's Bureau Express is an online newsletter designed for professionals concerned with child abuse and neglect, child welfare, and adoption. *Children's Bureau Express* is supported by the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services and published by Child Welfare Information Gateway **FULLPUBLICATION**

http://cbexpress.acf.hhs.gov/

How Courts Can Help Keep Foster Youth in Care Beyond Age 18

The role that courts can play in keeping youth in foster care beyond age 18 is the focus of a new brief from the Chapin Hall Center for Children. The study examined practices in Illinois, one of the few states that extend care to age 21. Findings indicate that strong advocacy within the family court on behalf of foster youth plays a primary role in retention rates, and is associated with a greater availability of placements and services for older foster youth, more involvement by caseworkers and other adults, more positive attitudes about remaining in care beyond age 18, and a greater awareness that, by law, youth may remain in care beyond age 18. **FULL ARTICLE:**

http://www.chapinhall.org/research/brief/continuing-foster-care-beyond-age-18

Journal Addresses Children and Procedural Justice

Court Review, the journal of the American Judges Association, includes an overview of the role of children in the courtroom and procedural justice. The article includes progress data on a current study indicating that like adults, children view their participation in legal proceedings that affect them as an important component of their judgment of procedural fairness. The issue also includes a general call for courts to treat people in ways that promote the experience of fairness. **FULL ARTICLE:**

http://aja.ncsc.dni.us/courtrv/cr44-1/CR44-1-2.pdf

2008 Kids Count Data Book Available Online

The annual *Data Book* from the Annie E. Casey Foundation is a national and state-by-state profile of the well-being of America's children that seeks to enrich discussions concerning ways to secure better futures for all kids. It ranks states on 10 key measures and provides data on the economic, health, education, and social conditions of America's children and families. **FULL PUBLICATION:**

http://www.ccf.state.ny.us/Initiatives/KidsCountRelate/kcResources/2008DataBookPDFS/2008DataBookFull.pdf

Information Sheet Produced on Mediation in Child Welfare

This information sheet, authored by Della Knoke and published by the Centre of Excellence for Children's Well-Being, describes the use of mediation in child welfare and summarizes key findings of evaluations that have been conducted in a number of areas across Canada and the United States. **FULL PUBLICATION:**

http://www.cecw-cepb.ca/sites/default/files/publications/en/Mediation74E.pdf

Website Presents Overview of Child and Family Services Review on New York State

The NYS Office of Children and Family Services has posted comprehensive information about the recent Child and Family Services Review of New York State. The CFSR is a Federal-State collaborative effort that identifies strengths and areas needing improvement in State programs and systems, focusing on outcomes for children and families in the areas of safety, permanency, and child and family well-being. The website includes a video summarizing the findings and next steps, including the state's Performance Improvement Plan. For more information, go to:

http://www.ocfs.state.ny.us/main/cfsr/

Child Safety Manual Provides Decision-Making Too

The newly released American Bar Association Child Safety Manual describes a decision-making framework and process to help legal professionals "make decisions about child safety using logic and analysis, rather than a form or formula." Written with Judges and Attorneys in mind, the manual is a useful tool for anyone participating in, or making, decisions about child safety. **FULL ARTICLE:**

http://nysccc.org/wp-content/uploads/ABA_Child_Safety_Manual_june32009.pdf

Manual Available to Help Protect Children Affected by Substance Abuse

The Children's Bureau released the latest in its Child Abuse and Neglect User Manual Series: *Protecting Children in Families Affected by Substance Use Disorders.* The manual examines: the nature of substance abuse disorders (SUDs); the impact of parental SUDs on child development; and screening, assessment and treatment approaches. It explores the roles of the child protective system and treatment providers, as well as collaborative techniques to help all of the systems involved with substance abusing families to work more effectively together. **FULL MANUAL:**

http://www.childwelfare.gov/pubs/usermanuals/substanceuse