

Title IV-E

An Overview

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SCAO - Child Welfare Services

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What is Title IV-E?

- Title IV-E is the short name for 42 U.S.C., Sections 670 - 679b of the Social Security Act.
- The Act requires that states make efforts not to unnecessarily remove children from their homes; when a child is removed, ensure timely efforts are made to return the child home as soon as it is safe, or find a permanent home for a child who cannot return home.

What is Title IV-E?

- The Act was established under the Spending Clause of the United States Constitution. It provides federal funds to pay for the costs of foster care for certain children removed from their home.
- The State of Michigan made a decision to accept the federal funds available under Title IV-E, therefore we are obligated to follow the requirements of the Act.
- The Michigan DHS administers the federal Title IV-E contract . The Feds audit our Title IV-E program periodically. **The next audit is March 2010, the Period Under Review is APRIL 1 – SEPT 30, 2009!**

The Goals of Title IV-E

- To improve the quality of care provided to children in substitute care.
- To reduce the number of children who are removed from their own homes for placement in substitute care.
- To return children to their homes as soon as the conditions in the home allow.
- To facilitate adoption or other permanent placements for children who cannot be returned home.

Title IV-E Funding

- The Act provides federal funding to enable States to provide foster care for children who were or would have been eligible for AFDC assistance under the State's approved Title IV-A plan in effect on July 16, 1996, but for removal from their home.
- If a case meets required criteria, the federal government reimburses the state for some of the cost of foster care placement.

Why do we care about Title IV-E?

- **Courts** –County Child Care Fund budget! We are required to uphold federal laws; when we meet IV-E requirements, we are rewarded with federal funds. This decreases the money used by County Child Care funds for child welfare cases; federal audits.
- **DHS** –County Child Care Fund budget! Title IV-E is DHS's primary funding source for Child Welfare Services; federal audits.
- **Attorneys** – County Child Care Fund budget! Attorneys want families to receive appropriate services, which can be funded by Title IV-E; It is the LGAL's responsibility to file appeals when IV-E is denied; federal audits.

Responsibilities under Title IV-E

- **Courts** – Follow federal requirements for Contrary to the Welfare & Reasonable Efforts findings; Ensure appropriately drafted court orders; Work with DHS to obtain necessary financial information from families for DHS to make eligibility determinations.
- **DHS** – Make IV-E eligibility determinations, provide notice to attorneys and courts when funding is denied; Work with courts and attorneys to ensure all necessary information is available to make the appropriate IV-E determination.
- **Attorneys** – Ensure clients are receiving the protections due under ASFA; Ensure appropriately drafted orders; Make sure an appropriate record is made; Work with DHS to obtain necessary financial information from families for DHS to make eligibility determinations; Appeals.

What are we here to learn today?

Session 1

- ❖ Contrary to the Welfare Findings
- ❖ Reasonable Effort Findings

Session 2

- ❖ Title IV-E Eligibility Requirements

Session 3

- ❖ How to handle a Title IV-E appeal/administrative hearing

Courts and Their Role in Title IV-E



Responsibilities of the Courts

- First and foremost, the court must uphold the law and ensure that ASFA and Title IV-E requirements are being met.

*A copy of ASFA is in your training materials

Responsibilities of the Courts (cont'd)

- Make appropriate findings within specified time frames.**
- Place the child “in the care, custody, and control of DHS”.**
- The court cannot retain any control over the placement of the child or IV-E funding will be jeopardized.**

Court Ordered Placement

- A "court-ordered" placement, as prohibited in the rule, involves the court taking placement and care responsibility away from the agency and assuming placement and care responsibility by choosing the child's placement without bona fide consideration of the agency's recommendation regarding placement.
- This does not mean that the court must always concur with the agency's recommendation in order for the child to be eligible for title IV-E foster care payments.
- As long as the court hears the relevant testimony and works with all parties, including the agency with placement and care responsibility, to make appropriate placement decisions, we will not disallow the payments.
- The prohibition in the rule also does not apply to situations where the court merely names the child's placement in the court order as an endorsement or approval of the agency's placement choice.
- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.21 (g)(3)

SCAO Recommendation

- If a request for a court –ordered or direct placement is made, a hearing date should be set for all parties to provide testimony regarding their placement preference.
- That the parties participate in a TDM or mediation regarding placement prior to the court directing placement.
- A direct placement should never occur without a noticed hearing regarding placement to all interested parties.

FINDING REQUIREMENTS

- Contrary to the Welfare findings.
- Reasonable Efforts to Preserve and Reunify the Family. (Prevent Removal)
- Reasonable Efforts to Place the Child in a Finalized Permanent Placement.

Contrary to the Welfare (CW) Findings

- These findings are required to be in the **first** court order.
- What if it isn't there? *This cannot be remedied.* The entire cost of care for that family will come from the county child care fund and can never be funded by Title IV-E.

What are CW Findings?

- Definition:
 - A court finding, after a presentation of facts, that “continuation in the home is contrary to the welfare of the child.”
- The finding must be detailed and specify the reasons removal from the home is necessary for the safety and welfare of the children.
- The finding must be documented in the first court order or the hearing transcript.
- Affidavits, nunc pro tunc orders, or orders referring to state law do not meet Title IV-E requirements.
- 45 C.F.R. Section 1356.21(d)

SCAO Best Practice

Recommendation:

Contrary to the Welfare Findings

- Include detailed findings in the written order.
 - Transcripts have been unavailable in the past.
 - Transcript issues will disqualify a case from Title IV-E funds and become an error case in our federal audit.
 - Use SCAO Forms

JJ cases and Contrary to the Welfare findings

- Juvenile Justice case can be eligible for Title IV-E reimbursement.
- The requirements are the same!
- Contrary to the Welfare Findings must be in the very first order, even if it is an order placing the child in the youth center.
- Contrary to the Welfare findings must support a reason the child is not safe in the home of the parent. Focus remains on the parents' actions regarding the child, not the child's actions.

JJ cases and Contrary to the Welfare findings

- The child must be placed in the care, custody and control of DHS.
- If your county is interested in exploring Title IV-E options for JJ cases, please consult with your DHS county manager and funding specialist regarding further details.
- SCAO JJ forms also approved by the Fed's.

Reasonable Efforts to Prevent Removal from Home

- These findings are required to be made within 60 days of the child's removal from the home.
- An order is not effective until the date it is signed, therefore, the order containing the RE findings must be SIGNED within 60 days of the child's removal from the home.
- What if it isn't in the order? *This cannot be remedied.* The cost of care for that family will come from the county child care fund during the period of out of home care when the findings were not made within the initial 60 days.

How to Make a Finding that Reasonable Efforts were made

- Definition:
 - A specific court finding, after a presentation of facts, that “reasonable efforts have been made to prevent the child’s removal from the home.”
- The findings must be detailed and include relevant case facts, in the court order or transcript. (Again, recall the concerns about transcripts.)
- 45 C.F.R. Section 1356.21(d)

Exceptions To Reasonable Efforts Finding: Aggravated circumstances

- (1) The Department shall submit a petition for authorization by the court under Section 2(b) of Chapter XIA of 1939 PA 288, MCL 712A.2 if one or more of the following apply:
- (a) The Department determines that a parent, guardian, or legal custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has abused the child or a sibling of the child and the abuse included one or more of the following:
 - (i) abandonment of a young child.
 - (ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
 - (iii) Battering, torture, or other severe physical abuse.
 - (iv) Loss or serious impairment of an organ or limb.
 - (v) Life threatening injury.
 - (vi) Murder or attempted murder.
- MCL 722.638

Exceptions to Reasonable Efforts

Finding: Aggravated Circumstances (cont'd)

- (b) The Department determines that there is risk of harm to the child and either of the following is true:
 - (i) The parent's rights to another child were terminated as a result of proceedings under Section 2(b) of Chapter XIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.
 - (ii) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under Section 2(b) of Chapter XIA of 1939 PA 288, MCL 712A.19B.

Aggravated circumstances listed in SCAO standard forms

- Aggravated circumstances are listed on page 4 of the Order after Preliminary Hearing, JC11a and numerous other SCAO Juvenile orders.

Reasonable Efforts to Finalize the Permanency Plan

- Definition:
 - A court finding that “reasonable efforts have been made to finalize the permanent plan for the child.”
 - This finding must be made within 12 months from the day the child entered foster care, and again every 12 months until the child has achieved permanency.

What is Permanency?

- Permanency means the child has been:
 - Returned home with the case closed;
 - Adopted;
 - Placed in a full guardianship; or
 - Aged out of the system.
- Termination of parental rights does not mean permanency has been achieved!

What if the Court can't find Reasonable efforts were made?

- At the time of a finding of “no reasonable efforts”, Title IV- E reimbursement becomes unavailable for that family.
- Once the court is able to make a positive reasonable efforts finding again, Title IV-E reimbursement is again available for the case.
- The time during which the negative finding was in effect is the time frame when the IV-E reimbursement is not available.

SUMMARY:

REQUIRED COURT FINDINGS

- Continuation in the home is contrary to the welfare of the child. **REQUIRED IN FIRST COURT ORDER REMOVING THE CHILD FROM HOME.**
- The agency has made reasonable efforts to prevent the child's removal from the home or a finding that no reasonable efforts need to be made. REQUIRED WITHIN 60 DAYS (SCAO recommends adding to first order).
- The agency has made reasonable efforts to reunify the family or achieve permanency for the child. REQUIRED WITHIN 12 MONTHS and EVERY 12 MONTHS THEREAFTER.

SCAO's Assistance to the Courts: We created forms for you!

- SCAO forms accommodate state and federal law.
- The Fed's have approved these forms. Properly filled out forms will pass federal audits.
- No Court wants to be the one that caused us to fail the audit!!

SCAO Best Practice Recommendations

- SCAO recommends that reasonable effort findings are made in the first order to avoid missing the 60 day time requirements.
- SCAO recommends detailed, case specific findings be included in the *written* order, of course, on a SCAO form.

Why do attorneys care about these federal requirements?

- Our state law closely follows the federal Title IV-E requirements.
- An understanding of the federal requirements will help attorneys advocate for their clients to ensure the agency is making reasonable efforts to prevent removal and to reunify the family.

Final Comments

- If the child is returned home and the case remains open for in-home services, but the child is removed again due to new allegations and the findings are made correctly, IV-E funding can be available from that point forward.

Final Comments

- Examples of court orders, using the SCAO forms are in your training materials.
- Examples of properly completed orders that should ensure compliance with Title IV-E eligibility requirements are included in your materials.

Tribal News Regarding IV-E Funds

- Under the new Fostering Connections Act, Federally recognized Tribes may now contract directly with the federal government to receive Title IV-E funds.
- The regulations as stated here will be the same for Tribes.
- Tribes that would like to contract directly, should start by contacting the federal regional office in Chicago.
- If Tribes would like to use our forms, we are willing to share.

QUESTIONS?

- Contact SCAO – Child Welfare Services

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