Title IV-E Funding
An Overview

February 27, 2020

SCAO-CWS & MDHHS-FCD
Joint Local Title IV-E Funding Training
for Wexford & Missaukee Counties
What is Title IV-E?

- Title IV-E is the section in the Social Security Act that governs foster care funding. 42 USC 670-679b
- The Act provides federal funding to States to pay a portion of the cost of foster care for children who were or would have been eligible for the former Aid to Families with Dependent Children (AFDC) program, but for removal from their home.
- States that decide to accept the federal funds available under Title IV-E are obligated to follow the requirements of the Act.
- CSA of the Michigan DHHS administers the federal Title IV-E contract. The federal DHHS audits our Title IV-E program periodically.

The Goals of Title IV-E

- To reduce the number of children who are removed from their own homes for placement in substitute care.
- To improve the quality of care provided to children 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**

**IV-E vs. Non IV-E Cases**

- **IV-E Eligible Cases**
  - State/Federal government split the cost of care
  - Ratio changes, but Federal dollars pay for majority
  - **No cost to the child county care fund (CCF)**

- **Non IV-E Eligible Cases**
  - County/State government split cost of care
  - 50/50 ratio
  - **CCF pays half the cost**

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**Responsibilities under Title IV-E**

**Courts (judicial)** - Make the necessary judicial findings to comply with IV-E federal funding regulations; Ensure orders are properly drafted; Vest state agency with placement & care authority; Timely permanency hearings.
- The court cannot retain control over the placement of the child or IV-E funding may be jeopardized.

**Child Welfare Agency (executive)** - State Plan requirements; IV-E eligibility determinations; Ensure eligible cases are properly paid for; Provide notice to attorneys and courts when funding is denied; Work with courts and attorneys to ensure all necessary financial information is available to make the appropriate IV-E determination.
IV-E Funding Determinations

A child must meet certain criteria to be “IV-E eligible”. If the child is eligible, and subsequently placed in an approved IV-E placement, then the federal government **reimburses** the state for a portion of the costs of the foster care placement and administrative costs for that child.

**Two Part Test:**
1. Is the child IV-E **Eligible**?
2. Is the child’s placement IV-E **Reimbursable**?

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6 Main IV-E Eligibility Requirements

1. US Citizenship/Qualified Alien Status
2. Age (0 - 21)
3. Former AFDC Program Eligibility
   - Deprivation, Income, etc.
4. Legal Jurisdiction
   - Placement and Care with state child welfare agency
5. Required Judicial Findings
6. Eligible Living Arrangement
   - Licensed foster homes, juvenile guardianships, non-secure private child care institutions, some public shelters
Placement and Care Responsibility
42 U.S.C. § 672(a)(2)

Under Title IV-E, to be eligible for federal funds, the Act requires that the responsibility for placement and care of the child is with the State agency administering the state plan approved under section 471 of the Act.

What is placement and care? The development of an individual case plan for the child, including periodic review of the appropriateness and suitability of the plan and the foster care placement, to ensure that proper care and services are provided to facilitate return to the child’s own home or to make an alternative permanent placement. The case plan activities include assessing family strengths and needs, identifying and using community resources, the periodic review and determination of the continued appropriateness of placement, and the efforts to finalize a permanency plan.

Court Ordered Placement

- Federal regulations prohibit court-ordered placements.
- A “court-ordered” placement 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 prohibition 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)

But what if the court disagrees with the agency’s placement decision?
Direct Placement

- The court may not always concur with the agency's placement decision.
- It is possible to disagree with the agency’s placement decision, make a direct placement, and maintain Title IV-E funding if the court follows the proper procedures.
- If the court hears the relevant testimony and works with all parties, including the agency, to make appropriate placement decisions, payments will not be disallowed.
- This is referred to as a “direct placement”.

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 Best Practice Recommendation for Direct Placements

- If a request for a court-ordered or direct placement is made, a hearing date must be set for all parties to provide testimony regarding their placement preference.
- Prior to the hearing, the parties should participate in a Family Team Meeting or mediation.
- To be eligible for Title IV-E funding, a direct placement may only result from a special noticed hearing to all interested parties.
- The order resulting from this hearing should clearly indicate the steps the court took to resolve the competing opinions as well as why the agency’s placement recommendation is not in child’s best interests.
Three Critical Judicial FINDINGS

1. Contrary to the Child’s Welfare to Remain in the Home
   MI Court Forms: JC05b, JC11a, JC75

2. Agency Made Reasonable Efforts to Prevent Removal or Active Efforts (Indian Child)
   MI Court Forms: JC05b, JC11a, JC75, JC49

3. Agency Made Reasonable Efforts to Finalize the Permanency Plan
   MI Court Forms: JC 19, JC 76

EX PARTE ORDER AUTHORIZING IMMEDIATE PROTECTIVE CUSTODY
MCL 712A.14b
(1) Upon receipt electronically or otherwise of a petition or affidavit of facts, a judge or referee may issue a written ex parte order, electronically or otherwise, authorizing the department of human services to immediately take a child into protective custody and place the child pending the preliminary hearing if the court finds all of the following:
   (a) There is reasonable cause to believe that the child is at substantial risk of harm or is in surroundings that present an imminent risk of harm and the child's immediate removal from those surroundings is necessary to protect the child's health and safety.
   (b) The circumstances warrant issuing an ex parte order pending the preliminary hearing.
   (c) Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.
   (d) No remedy other than protective custody is reasonably available to protect the child.
   (e) Continuing to reside in the home is contrary to the child's welfare.
(2) The ex parte order shall be supported by written findings of fact.

PLACEMENT OF CHILD INTO FOSTER CARE
MCL 712A.13a(9)(c)
(9) The court may order placement of the child in foster care if the court finds all of the following conditions:
   (a) Custody of the child with the parent presents a substantial risk of harm to the child's life, physical health, or mental well-being.
   (b) No provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from risk as described in subdivision (a).
   (c) Continuing the child's residence in the home is contrary to the child's welfare.
   (d) Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.
   (e) Conditions of child custody away from the parent are adequate to safeguard the child's health and welfare.
1. Contrary to the Welfare (CTW) Findings

- These findings are required to be in the first court order authorizing removal. Critical to ensure Title IV-E funding!

- The finding must be detailed and specify the reasons removal from the home is necessary for the safety and welfare of the children.

- What if the finding isn’t made? This cannot be remedied.
  - The entire cost of care for that family will be state/county funded and can never be funded by Title IV-E during the removal episode.
  - Affidavits, nunc pro tunc orders, or orders referring to state law without case specific information do not meet Title IV-E requirements.

45 C.F.R. Section 1356.21(d)

2. Reasonable (or Active) Efforts to Prevent Removal from Home

- A specific court finding, after a presentation of facts, that “reasonable efforts have been made to prevent the child’s removal from the home.”

- Title IV-E regulations require this finding to be made within 60 days of the child’s removal from the home. Funding does not begin until the finding is made. JC05b, JC11a, JC75

- What if this finding isn’t made? This cannot be remedied. The findings must be detailed and include relevant case facts.
  - For example, “the agency provided the mother, Samantha Smith, substance abuse counseling for 6 months, and in-home care prevention assistance twice a week for 3 months.”

45 C.F.R. 1356.21(d)
STATE OF MICHIGAN
ORDER TO TAKE CHILD(REN)
INTO PROTECTIVE CUSTODY AND PLACE
(CHILD PROTECTIVE PROCEEDINGS)
[EX PARTE]
CASE NO. [Petition No.]

Court address

THE COURT FINDS:
1. In the matter of
   (name(s), mailing address, phone number)
   (see reverse side for other identifying information)
2. Date of entry of order
   (see reverse side for other identifying information)

3. a. The child(ren) have already been removed from the parent(s), guardian, or legal custodian
   and is/are absent without leave from court-ordered placement.
   b. Under MCR 7.02(A) and MCR 3.393(B), there is reasonable cause to believe that
      1) The child(ren) is/are at substantial risk of harm or is/are in surroundings that present an imminent risk of harm
         and the child(ren)’s immediate removal from those surroundings is necessary to protect the child(ren)’s health and safety.
      2) The circumstances warrant issuing this order.
      3) (Continuing to reside in the home is contrary to the child(ren)’s welfare because ____________________________)

4. a. Reasonable efforts are not required to prevent or eliminate the child(ren)’s removal from the home (see note below).
   b. the [ ] mother [ ] father [ ] other [ ] subjecting the child(ren) to the successive event(s) of
   c. as provided in section MCL 712.1303(1) and (2), and as evidenced by

5. a. Reasonable efforts are not required to prevent or eliminate the child(ren)’s removal from the home due to ____________________________
   b. the [ ] mother [ ] father [ ] other [ ] subjecting the child(ren) to the successive event(s) of
   c. as provided in section MCL 712.1303(1) and (2), and as evidenced by

6. a. Conviction for murder of another child of the parent
   b. Conviction for voluntary manslaughter of another child of the parent
   c. Conviction for aiding or abetting in the murder or manslaughter of another

13. The child(ren) has/have not been removed prior to this hearing and an order to take the child(ren) into protective
custody is necessary because:
   a. the child(ren) is/are at substantial risk of harm or is/are in surroundings that present an imminent risk of harm
      and the child(ren)’s immediate removal from those surroundings is necessary to protect the child(ren)’s health and safety.
   b. the circumstances warrant issuing this order; and
   c. no remedy other than protective custody is reasonably available to protect the child(ren).

14. The child(ren) is/are Indian as defined in MCR 3.002(12). The petitioner [ ] has [ ] has not given notice of the
    preliminary hearing as required by MCR 3.920(C)(1).
    The preliminary hearing must be adjourned pending conclusion of a removal hearing required by MCR 3.967.
    The removal hearing required by MCR 3.967 was conducted in conjunction with this hearing (see required findings in item 16).
    A qualified expert, [ ] testified, [ ] did not testify as required by law.

15. a. Contrary to the welfare findings were made in a prior order.
    b. It is contrary to the welfare of the child(ren) to remain in the home because ____________________________

16. a. Consistent with the circumstances, reasonable efforts to prevent or eliminate removal of the child(ren) from
    the home were made as determined in a prior order.
    b. Consistent with the circumstances, reasonable efforts were made to prevent or eliminate removal of the child(ren)
    from the home. Those efforts include ____________________________.
    c. The child(ren) is/are Indian, and the court finds by clear and convincing evidence and the testimony of a qualified
       expert witness who has knowledge about the child-rearing practices of the Indian child’s tribe, that active efforts
       have [ ] have not been made to provide remedial services and rehabilitation programs designed to prevent the
       breakup of the Indian family. These efforts have proved [ ] unsuccessful [ ] successful, the continued
Reasonable Efforts Not Required Finding:

**Aggravated circumstances**

1. The parent has subjected the child or a sibling of the child to aggravated circumstances as enumerated in MCL 722.638 (1)-(2). These circumstances may include:
   i. Abandonment of a young child; Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate; Battering, torture, or other severe physical abuse; Loss or serious impairment of an organ or limb; Life threatening injury; Murder or attempted murder.
   ii. The parent has had parental rights to another child terminated, and has failed to rectify the conditions that lead to the prior TPR.
2. OR the parent has been convicted of 1 or more of the following:
   i. Murder of another child of the parent
   ii. Voluntary manslaughter of another child of the parent
   iii. Aiding or abetting, attempting, conspiring or soliciting to commit such a murder or such a voluntary manslaughter
   iv. A felony assault that results in serious bodily injury to the child or another child of the parent
3. OR the parent is required by court order to register under the sex offenders registration act.

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3. Reasonable Efforts to Finalize the Permanency Plan

- A court finding that “reasonable efforts have been made to finalize the permanency plan for the child.”
- Detailed facts to support this finding in the court order.
- This finding must be made at least once every 12 months. MCL 712A.19a(4) JC 19 JC 76
- Identify the permanency goal for each child.
What is Permanency?

Federal Permanency Goals:

1. Reunification
2. Adoption
3. Guardianship
4. Placement with a fit and willing relative
5. Placement in Another Planned Permanent Living Arrangement (APPLA)

*** APPLA can only be the goal for youth age 16+

Order After Dispositional Review/Permanency Planning Hearing

16. The children(ren) is/are Indian and the court finds that active efforts have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

17. "Reasonable efforts have not been made to finalize the court-approved permanency plan of:
   a. return to the parent for the child(ren) named
   b. adoption for the child(ren) named
   c. legal guardianship for the child(ren) named
   d. placement with a fit and willing relative for the child(ren) named
   e. placement in another planned permanent living arrangement (APPLA) for the child(ren) age 16 or older named

   due to the compelling reasons that:

   The reasonable efforts to finalize the court-approved permanency plan identified above include:

   Because adoption is the court-approved permanency plan, the department shall be ordered to initiate proceedings to terminate parental rights.

18. The permanency planning goal in item 17, is appropriate, is no longer appropriate and shall be
SUMMARY: COURT REQUIREMENTS

1. Continuation in the home is contrary to the welfare of the child. **Required in first court order removing the child from the home.**

2. Placement and care responsibility for the child vested with state child welfare agency.

3. 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 (aggravated circumstances). **Required within 60 days** (*SCAO recommends finding in first court order.*)

4. The agency has made reasonable efforts to finalize the permanency plan for the child. **Required within 12 months and every 12 months thereafter.**

JJ Cases and Title IV-E Funding

Juvenile Justice cases can be eligible for Title IV-E funding. Same exact rules apply!

- *Contrary to the Welfare* Findings must be in the first order authorizing removal or placing the child into foster care *(Ayotte).*
- DHHS must be vested with placement and care responsibility as soon as the youth leaves detention to become reimbursable.
- *Reasonable Efforts to Prevent Removal* and to *Finalize the Permanency Plan* Findings still required.
- Best practice is to reference NA case file in DL orders and vice versa if the youth is a dual ward.
REMOVAL FINDINGS in JJ Cases
How and Why the Child’s Best Interests would be served outside of the home.

- Step 1: The court may base the removal finding on either:
  A. The actions of the parent(s)
  B. The youth’s threat to self

- Step 2: What is the risk of harm to the child that results? Use case specific facts to support the finding.
  
  Key: Tie the action to the harm or risk of harm.
  - It is contrary because...and why?
  - Details, details, details!

Placement and Care Responsibility

- The court must vest DHHS with placement and care authority.
  - The court cannot retain control over the placement of the child or IV-E funding will be jeopardized
  - The court may “recommend” a placement or concur with DHHS’s decision for placement.

- This does not interfere with the probation officer’s ability to supervise the youth.

- Best practice: Give DHHS placement and care responsibility as early as possible, but no later than the date the youth is placed in a title IV-E reimbursable placement.

- If a dual ward, court orders in both the NA and JJ case files must clearly give DHHS placement and care. Compliance issues arise when there is restrictive or inconsistent language in the JJ court orders.
Final Comments

► If the child is returned home and subsequently removed at a later date, this is considered a new placement episode. All court findings are required to be made again and a new IV-E eligibility determination will be made by DHHS.

► Revocation of a Juvenile Guardianship

► Dependency

► IV-E Appeal:
  ► If the court does not agree with the agency’s decision to deny IV-E funding, an administrative hearing may be requested. The court itself cannot file the administrative appeal, but the LGAL or an attorney appointed for the child for this specific purpose, may request the appeal.

On the Horizon: Qualified Residential Treatment Program (QRTP) & Required Court Approval

New Law MCL 722.123a (SB 468)

► Implementation Date: October 1, 2020

► FFPSA goal of reducing the number of children placed in congregate care. If placement necessary, should be short term and for treatment purposes only.

► Initial 30 day assessment by neutral-third party to determine appropriateness of placement in a QRTP
  ► In order for a provider to become a QRTP compliant facility they must meet certain new federal requirements; trauma-informed, 24/7 nursing staff, inclusion of family members in treatment program, 6 months post-discharge and after care support.

► Within 60 days of the child’s placement in a QRTP, the court must review the initial assessment and approve or disapprove the placement.
  ► If child remains in QRTP, continued judicial oversight required at each review hearing.
QUESTIONS?

▸ Agency Contact MDHHS-FCD
  
  MDHHS-federalcompliancedivision@michigan.gov

▸ Court Contact SCAO - Child Welfare Services

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