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Children's Bureau Guide Provides Guidance on Use of Title IV-E for Legal Representation

On July 20, 2020, the Children's Bureau released a Child Welfare Policy Manual (CWPM) that explains some of the more technical questions and approaches to funding legal representation for parents and children by tapping into federal Title IV-E funds. [The Frequently Asked Questions: Independent Legal Representation.](#)

Over the past three years, the Children's Bureau has promoted the use of Title IV-E funds for legal representation. When parents have attorneys, some locations such as New York City, have demonstrated positive outcomes in terms of placements and practice. The Bureau has promoted ways to use Title IV-E entitlement funding to expand legal representation. The challenge is that states can draw IV-E funds in those child cases eligible for IV-E funds. According to national budget data, the percentage of children in foster care covered by Title IV-E has shrunk from 55 percent in 2000 to a projected 40 percent this year. That means not all legal representation will qualify for federal matching funds. The new guidance by the Bureau tries to make it easier for states and advocates to understand.

The Children's Bureau has determined that states and tribal may use kinship navigator funds provided under title IV-B, (not Family First Prevention Services) to provide brief legal services to "assist kinship caregivers in learning about, finding and using programs and services to meet the needs of the children they are raising and their own needs," which may include "support[ing] any other activities designed to assist kinship caregivers in obtaining benefits and services to improve their caregiving."

IV-E agencies may claim the 50 percent administrative match for the costs of "preparation and participation in judicial determinations" in all stages of foster care legal proceedings by a IV-E agency attorney, an attorney providing independent representation to a child who is a candidate for title IV-E foster care or is in title IV-E foster care and an attorney providing independent representation to such a child's parent. The "candidate for foster care" refers to the way states can access some IV-E funds for pre-placement services. Funds may also be used in this way when a state has an agreement with a tribe.

States may claim administrative costs for paralegals, investigators, peer partners, or social workers as administrative costs to the extent they are necessary to support an attorney providing independent legal representation. The Title IV-E agency does not have to submit a title IV-E plan amendment to claim administrative costs for independent legal representation. A title IV-E agency may claim title IV-E administrative costs for a Guardian Ad Litem (GAL) if s/he is an attorney providing independent legal representation to a title IV-E eligible child in all stages of foster care proceedings. A Title IV-E agency

may claim only for the legal representation costs associated with the foster care legal proceedings that are necessary for the proper and efficient administration of the Title IV-E plan. The agency may not claim expenses related to preparation and participation in delinquency cases. The time an independent attorney spends preparing for and participating in delinquency proceedings is not an allowable title IV-E cost.

The state must update the Public Assistance Cost Allocation Plan (PACAP). If a child is not specifically identified as a youth in title IV-E foster care or a candidate for title IV-E foster care, there must be an allocation to assure that each participating program is charged its proportionate share of costs. For candidates, the allocation must be based on a determination both of candidacy for foster care and of potential IV-E eligibility. Using a ratio of IV-E to non-IV-E foster care cases (i.e., title IV-E participation rate) is one acceptable means of allocation. Other means of determining candidacy and of determining potential IV-E eligibility may also be acceptable.

The state matching funds must be sourced from state or local appropriated funds or donated funds but may not be sourced from federal funds provided through another program. State title IV-E agencies may not use third party in-kind expenditures (or contributions) as a source of the state share of funds for the foster care programs under title IV-E of the Act. Title IV-B funds may not be used as a match.

Tribal funds may be sourced either from tribal appropriated funds or from third-party in-kind sources. A tribal title IV-E agency may claim in-kind expenditures for independent legal representation from any allowable third-party sources.

Finally, a Title IV-E agency may claim allowable costs at a 75% matching rate to provide short-term training to an attorney representing children and youth who are receiving title IV-E. Covered costs are limited but could include Title IV-E policies and procedures; cultural competency related to children and families; child abuse and neglect issues, such as the impact of child abuse and neglect on a child; and general overviews of the issues involved in child abuse and neglect investigations.

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