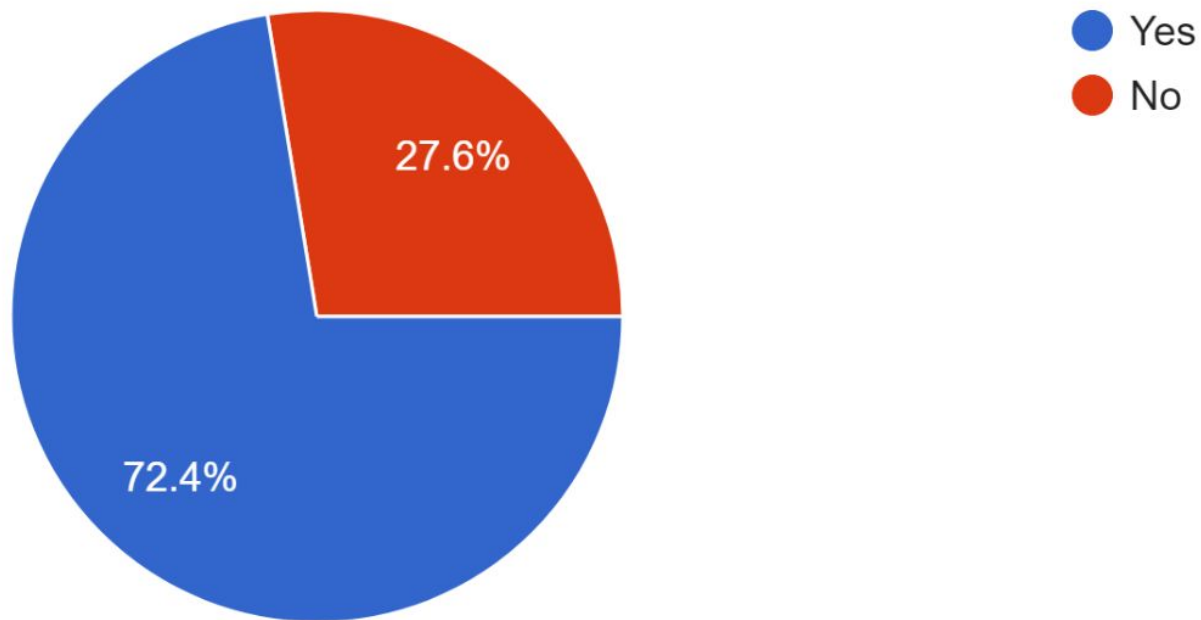


This presentation was delivered at the monthly PLA / PP National Cohort meeting in October of 2022. The survey responses referenced in this presentation were gathered from a survey distributed to Cohort participants in the third quarter of 2022.

For more information about this survey and the responses gathered, please contact Emilie Cook at [etcook2@emory.edu](mailto:etcook2@emory.edu)

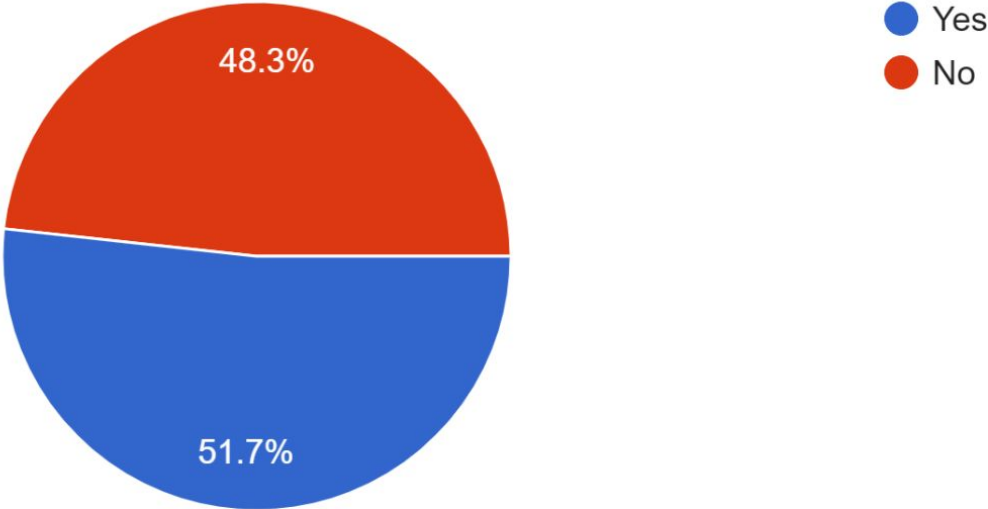
Is your program currently fully funded for the upcoming fiscal year?

29 responses



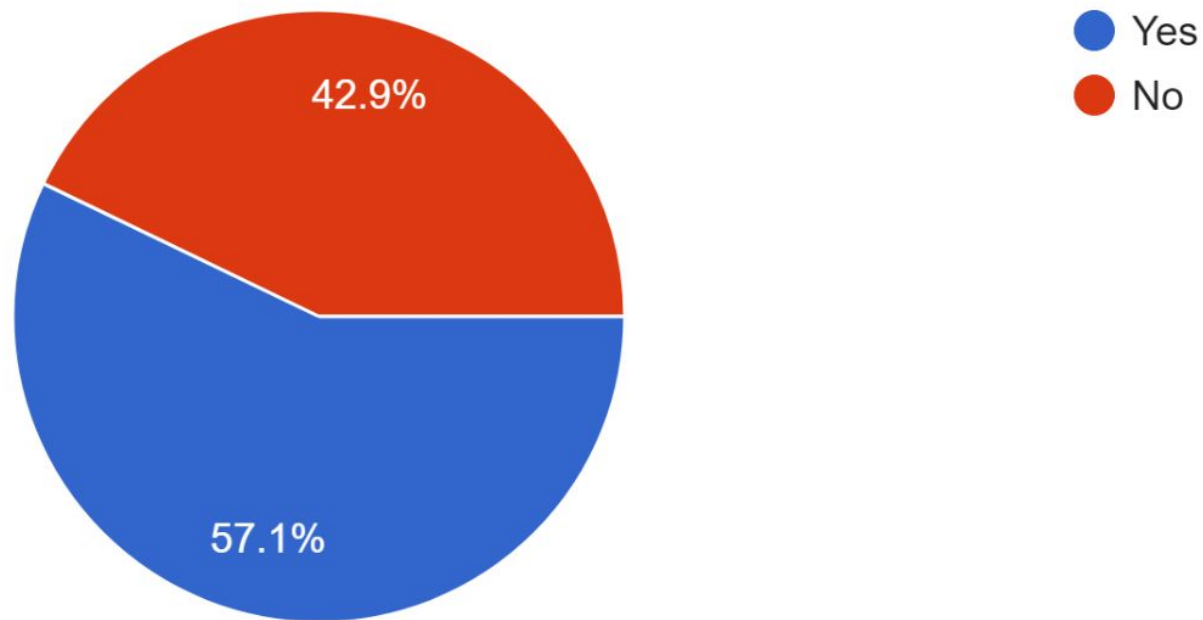
Do you have concerns about your program's ability to sustain current funding levels moving forward?

29 responses



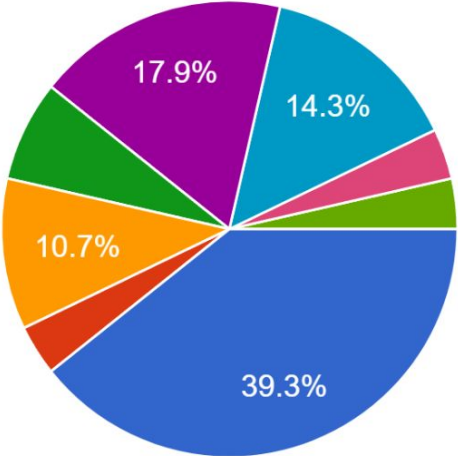
Is your program currently working to secure additional funding?

28 responses



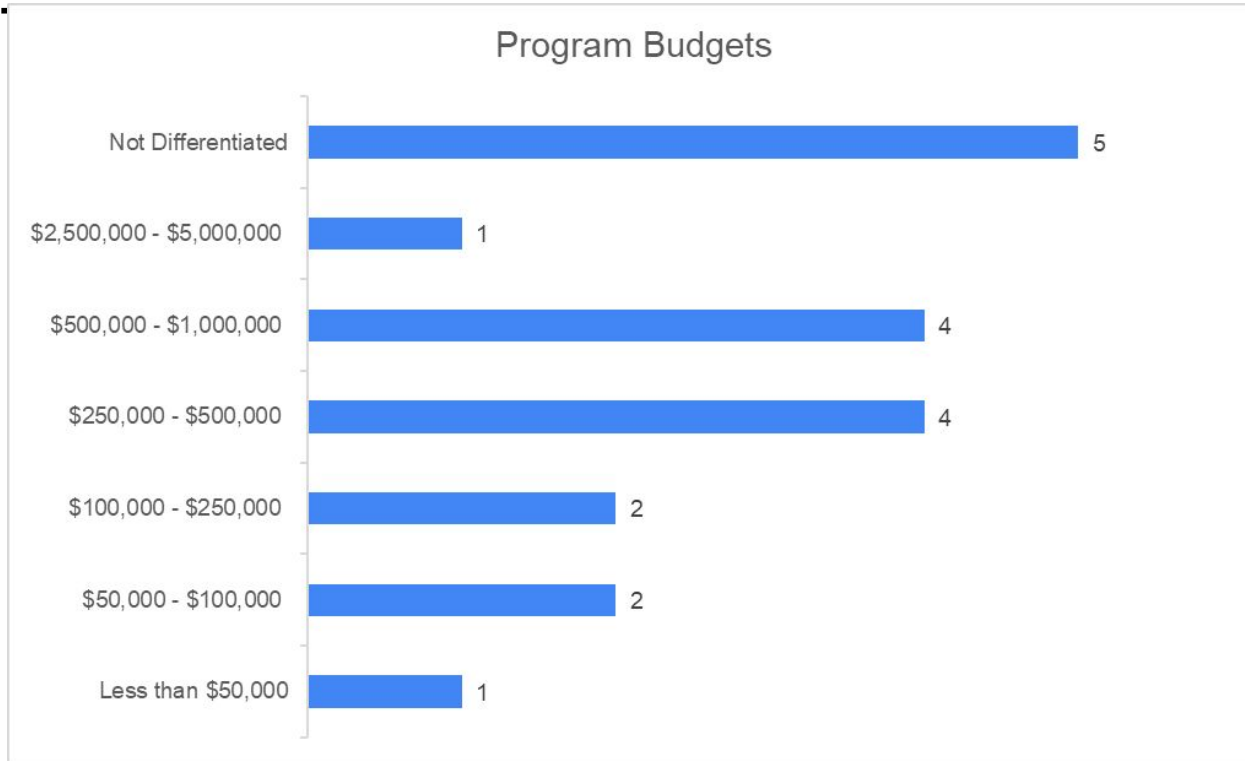
What is your program's approximate total operating budget? If your program is part of a larger service provider, please provide a rough estimate o...o the preventive or pre-petition services program.

28 responses



- N/A We haven't yet set a budget for our program.
- Less than \$50,000
- \$50,000 - \$100,000
- \$100,000 - \$250,000
- \$250,000 - \$500,000
- \$500,000 - \$1,000,000
- \$1,000,000 - \$2,500,000
- \$2,500,000 - \$5,000,000
- \$5,000,000 +

Of the 21 existing programs that responded to the survey, 19 programs provided a response with respect to their total operating budget:



1 program annual budget of \$2,500,000 - \$5,000,000

4 programs annual budget between \$500,000 - \$1,000,000

4 programs annual budget between \$250,000 - \$500,000

2 programs annual budget between \$100,000 - \$250,000

2 programs annual budget between \$50,000 - \$ 100,000

1 program annual budget less than \$50,000

Keep in mind this represents the 14 responding programs that are 1) already in operation and 2) whose operating budgets for preventive legal advocacy and pre-petition work can be differentiated from their organization's larger operating budget

Responses from existing funded programs are associated with 12 different states:

Arizona

California

Colorado

Illinois

Iowa

Massachusetts

Michigan

Nebraska

New York

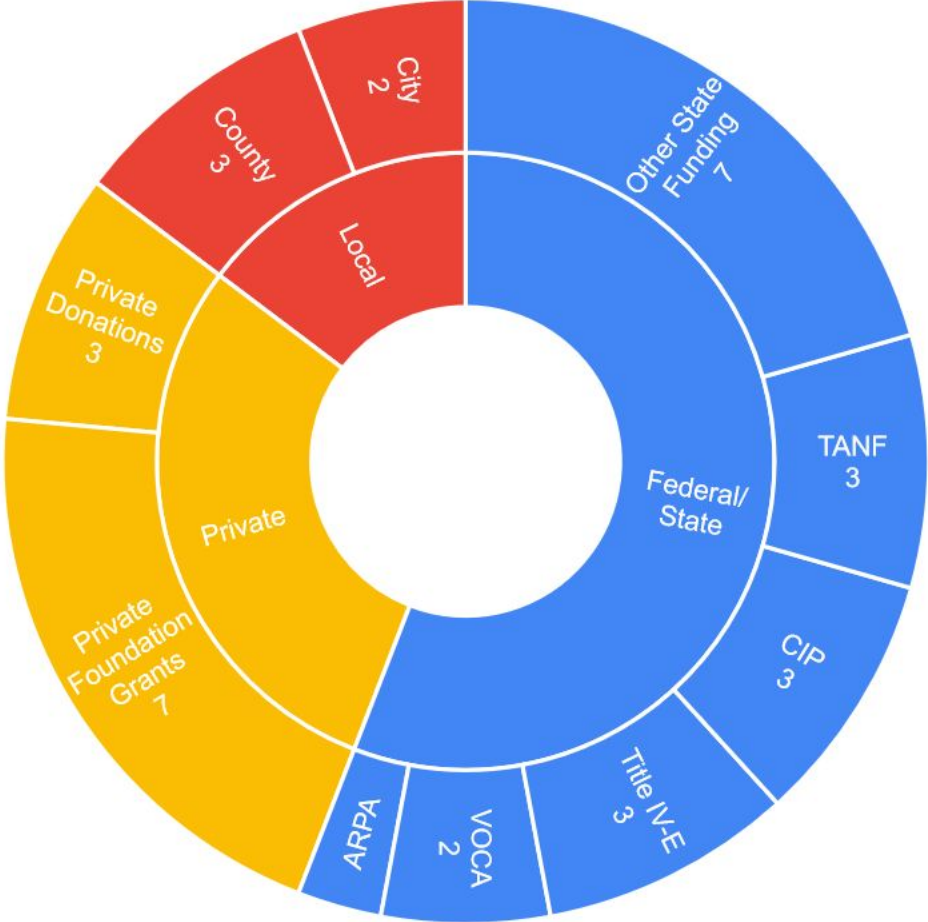
Oklahoma

Oregon

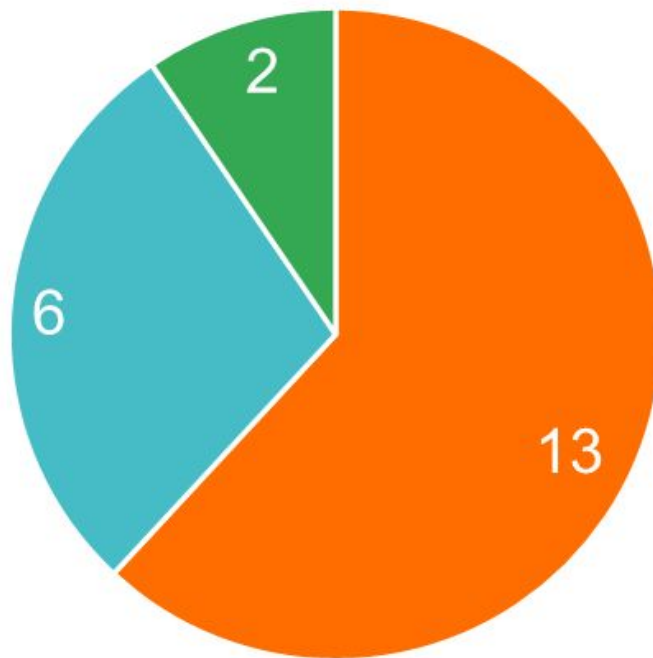
Texas



# Funding Sources



## Diversity of Funding



■ Single Source   ■ At Least Two   ■ Three or More

# 3 Types of Common funding sources:

## **Federal / State:**

State Budgets

Temporary Assistance to Needy Families

Court Improvement Grants

Title IV-E Reimbursements (3 states)

Victims of Crime Act Funds

American Rescue Plan Act (temporary)

## **Private**

Private Foundations

Private Donations

## **Local**

City Budgets

County Budgets

Let's talk Title IV-E . . .

In 2018 Title IV-E was expanded to provide 50% reimbursement for costs associated with independent legal representation for parents and children in IV-E eligible cases.

This expansion was not accomplished thru legislation, but rather a change included in the response to Section 8.1B, questions 30, 31, and 32 of the Child Welfare Policy Manual.

**30. Question: May a title IV-E agency claim title IV-E administrative costs for attorneys to provide legal representation for the title IV-E agency, a candidate for title IV-E foster care or a title IV-E eligible child in foster care and the child's parents to prepare for and participate in all stages of foster care related legal proceedings?**

**Answer:** Yes. The statute at section 474(a)(3) of the Act and regulations at 45 CFR 1356.60(c) specify that Federal financial participation (FFP) is available at the rate of 50% for administrative expenditures necessary for the proper and efficient administration of the title IV-E plan. The title IV-E agency's representation in judicial determinations continues to be an allowable administrative cost.

Previous policy prohibited the agency from claiming title IV-E administrative costs for legal services provided by an attorney representing a child or parent. This policy is revised to allow the title IV-E agency to claim title IV-E administrative costs of independent legal representation by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare for and participate in all stages of foster care legal proceedings, such as court hearings related to a child's removal from the home. These administrative costs of legal representation must be paid through the title IV-E agency. 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.

- **Source/Date:** 1/7/2019
- **Legal and Related References:** 45 CFR 1356.60(c), section 474(a)(3)

*This expansion was exciting because it carved out federal entitlement funding for legal representation.*

*Policy advocates were thrilled and there was a concerted effort to rally support for the change to ensure that the Children's Bureau couldn't just walk it back.*

*While this expansion of IV-E funding for parent/child legal representation presents a huge opportunity, actually capturing the funding isn't a simple task.*

Based on FY 2021 Title IV-E reporting, only 25 states are currently claiming IV-E reimbursement for independent legal representation provided to IV-E eligible children and parents in the underlying dependency proceeding even after the child has been placed in foster care (ie. “in placement” legal representation).

Alaska	Louisiana	Pennsylvania
Arkansas	Maryland	South Carolina
California	Michigan	Texas
Colorado	Minnesota	Utah
Delaware	Montana	Washington
Florida	Nevada	Wisconsin
Illinois	Ohio	
Iowa	Oregon	

So why are only half the states capitalizing on this new reimbursement opportunity?

Multiple issues:

- A. The need for State agency cooperation
- B. Issues with original funding sources
- C. Issues with decentralized representation
- D. IV-E eligibility penetration rates
- E. Limits on the scope of reimbursable representation
- F. Audit risk



A. State as Title IV-E Agency: Cooperation is Key

1. Courts or programs providing independent legal representation to parents and children in IV-E eligible cases must report their costs to the state agency
2. State agency must then claim those costs together with other IV-E eligible expenditures
3. State agency then passes the reimbursement funds on to the Court or program once received

In order for this work, you need an MOU in place with the State.

See Colorado MOU as an example.

## B. Issues with Original Funding Sources:

Title IV-E provides for reimbursement of STATE expenditures only.

In many jurisdictions, parent and child representation is funded by the county.

This is the case in most jurisdictions in Georgia, for example.

County funds would have to be funneled through the state in order for the state to seek reimbursement for those costs.

## C. Issues with Decentralized Representation:

In order for the state agency to seek reimbursement for the costs associated with parent child representation, you need a centralized billing and reporting system.

In some states, there is a single state agency responsible for all parent representation contracts, or a single office responsible for overseeing all GALs / Child Attorneys.

These states are better prepared to tap into IV-E reimbursements because there is already a centralized billing system.

## D. Issues with Penetration Rates: Is the Juice worth the Squeeze?

Remember: we aren't seeking reimbursement for 50% of the costs of parent and child representation across all dependency cases; it's only 50% of the costs associated with IV-E eligible cases, and the reimbursement claimed by the state agency cannot be an approximation. **The state agency must be able to show state expenditures for legal rep in the specific IV-E eligible cases.**

## Penetration Rate Defined:

A state's penetration rate is the percentage of children who are IV-E eligible compared to the total foster care population in the state.

To determine the total impact of IV-E reimbursement for legal representation, you take the amount of money the state is paying for legal representation and multiply it by the penetration rate, and then by 50%.

Some states, again like Georgia, have very low penetration rates because IV-E eligibility relies on an outdated poverty level determination. In Georgia, household income must be extremely limited in order for that child to be IV-E eligible, which means only about 20% of our child welfare cases even qualify as IV-E eligible.

## E. Limits on the scope of reimbursable representation:

1. **Candidacy Definitions:** It is up to the states to define “candidates” for foster care. The more restrictive the definition, the fewer the cases that will qualify for IV-E reimbursement for Pre-Petition services. (Side note: Colorado recently passed a very broad candidacy definition)
2. The three acceptable methods of documentation indicating that a child is a candidate for title IV-E foster care benefits are: (1) A defined case plan which clearly indicates that, absent effective preventive services, foster care is the planned arrangement for the child, (2) an eligibility determination form which has been completed to establish the child's eligibility under title IV-E, or (3) evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order or a transcript of the court's proceedings.

If the goal of preventive legal advocacy is to address civil legal needs of families in order to prevent or limit CPS involvement, our programs by their very nature aspire to serve families before they become “candidates,” or are otherwise determined to be IV-E eligible.

3. Reimbursement limited to legal representation that is directly related to the underlying dependency case:

I recently had an email exchange with a child welfare specialist at the Children's Bureau who reaffirmed the Bureau's position that the subject matter of the attorney's work must be squarely on the IV-E eligible dependency case and could not be based on legal representation in related civil matters.

That said, there is a proposed regulation out there that would expand the scope of reimbursable legal representation to include representation in "other related civil legal proceedings."



**Abstract:**

This regulation proposes to allow a title IV-E agency to claim Federal financial participation for the administrative cost of providing independent legal representation to a child who is either a candidate for foster care or in foster care, and his/her parent to prepare for and participate in judicial determinations in foster care and other related civil legal proceedings.

## F. IV-E Reviews (Audits):

State agency is on the hook for the audits, and reimbursements for parent / child legal representation presents a whole new opportunity for problems in the audit process.

If the federal government decides to claw back money based on the audit, it's the state agency not the pre-petition or preventive advocacy program that will be on the hook for the money.

When we look at FY 2021 Title IV-E reporting for child/parent legal representation reimbursement claims related to pre-placement cases, only 6 states are currently seeking reimbursement for that legal representation.

Colorado                      Minnesota

Iowa                              Utah

Louisiana                      Wisconsin