

ATTACHMENT C

TITLE IV-E ENHANCED PARENTAL REPRESENTATION ENROLLMENT PROCEDURE

SFY 2020-21

These instructions describe the process to be followed by localities and the New York State Office of Indigent Legal Services (ILS) to obtain federal reimbursement under title IV-E of the Social Security Act for allowable expenditures associated with independent legal representation for parents in child welfare proceedings.

Pursuant to a policy change adopted by the Children’s Bureau of the United States Administration for Children and Families, eligible expenses include those associated with independent legal representation in child welfare proceedings for parents whose child is a candidate for title IV-E foster care or is eligible for title IV-E foster care.

Prior to this policy change, title IV-E federal reimbursement for legal representation costs in child welfare matters were available only for the cost of title IV-E agency attorneys.¹ States, namely the title IV-E agency, may now access title IV-E funding for certain eligible costs of independent legal representation for title IV-E eligible children and their parents “to prepare for and participate in all stages of foster care related legal proceedings.”² The goal is to use, at minimum, a portion of this funding to enhance the quality of publicly funded independent legal representation for eligible children and their parents in alignment with applicable standards and best practices.³

To that end, in order to access this newly allowable revenue source for reimbursement for eligible expenditures associated with parental representation, INSERT NAME OF LOCALITY has entered into this memorandum of understanding (MOU) with the New York State’s title IV-E agency, the New York State Office of Children and Family Services (OCFS). INSERT NAME OF LOCALITY will submit claims to OCFS, as prescribed in the method and manner in Attachment B of this MOU. Attachment B constitutes the prescribed method in the OCFS Title IV-E Legal Representation Administration and Training Claim Form.

Additionally, INSERT NAME OF LOCALITY, must include an enhanced quality legal representation services three-year plan approved by ILS, annual reports, and a final report. As part of this enhanced quality legal representation services plan, each covered entity must commit to providing new training on child welfare proceedings, best practices, or attendant legal requirements for attorneys representing parents in child welfare proceedings. Such training must

¹ Mark Hardin, “Claiming Title IV-E Funds to Pay for Parents’ and Children’s Attorneys: A Brief Technical Overview,” *Child Law Practice Today* (American Bar Association, February 25, 2019), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/claiming-title-iv-e-funds-to-pay-for-parents-and-childrens-attor/.

² *Technical Bulletin - FAQs on Independent Legal Representation*, <https://www.acf.hhs.gov/cb/resource/technical-bulletin-faqs-legal-representation>; see also above resource.

³ Administration for Children and Families, Children’s Bureau, *Technical Bulletin Frequently Asked Questions: Independent Legal Representation*, p. 1, https://www.acf.hhs.gov/sites/default/files/cb/technical_bulletin_faq_legal_representation.pdf.

occur within the first year that this funding is available and be offered on a recurring basis for the duration of the MOU. INSERT NAME OF LOCALITY must also commit to complete at least one new additional action or actions to increase quality representation for parents as are listed below, to be completed over a period of the term of the governing MOU. ILS-approved quality enhancement plans are subject to review and approval as per this Attachment C three years from the date of the MOU.

INSERT NAME OF LOCALITY may opt to modify its proposed plans throughout the duration of the three-year period. However, modification of the enhanced quality plan will be subject to ILS approval.

Entities within a county or city or on a regional basis may opt to jointly collaborate on an initiative described herein; however, each specified entity will be responsible for submitting its own claims in accordance with the applicable claiming instructions, and each locality or city must enter into a separate MOU with OCFS.

Procedure for Enrollment

To participate in this funding opportunity for representation of parents in child welfare matters, local government officials and providers of parental representation of each interested locality (county or the City of New York) must consult with ILS in developing a customized, three-year plan to improve the ability of parental representation providers to deliver high quality, independent legal representation in accordance with applicable standards, and best practices.⁴ This consultation will ultimately result in a plan that will be approved by ILS and submitted to the state title IV-E agency, OCFS, for purposes of formally enrolling the locality in this reimbursement process so that claims can be filed and paid by OCFS.

Plan Required Content: Approved plans will include at least two major components as well as reporting requirements.

Quality Enhancement: First, each approved plan must include at least one (1) action item designed to enhance the quality of parent representation in child welfare matters. To recommend what action item(s) will best serve the needs of clients, ILS will work with parent representation providers and local government representatives to conduct a needs assessment as described below. This process will provide localities the opportunity to draw on ILS's extensive experience working with counties to use state funding to improve the quality of publicly funded criminal defense.⁵ To participate in this

⁴ New York State Office of Indigent Legal Services Standards for Parental Representation in State Intervention Matters, <https://www.ils.ny.gov/files/Parental%20Representation%20Standards%20Final%20110615.pdf>; see also the Family Justice Initiative, Attributes of High-Quality Legal Representation, <https://familyjusticeinitiative.org/advocacy/high-quality-representation/>.

⁵ Reports regarding the progress of improving the quality of mandated criminal defense representation in accordance with Executive Law § 832(4) are available on ILS's website, and include the following: *Performance Measures Annual Report* (July 1, 2020); *Statewide Plan for Implementing Quality Improvement: Year Two Annual Report* (August 11, 2020); and *Statewide Plan for Implementing Counsel at Arraignment: Year Two Report* (September 30, 2020).

funding opportunity in child welfare matters, INSERT NAME OF LOCALITY must submit a quality enhancement plan as described below, on or before April 1, 2022. In the event INSERT NAME OF LOCALITY does not submit a quality enhancement plan on or before April 1, 2022, federal reimbursements will be halted until such time an ILS-approved plan is received by OCFS.

Training: Second, each plan must include a training agenda on specified child welfare law, practice, and procedure.⁶ In addition to working with the locality and its parent representation provider(s) to identify tailored training opportunities and a proposed timetable for delivery, ILS will make available an intensive training curriculum to assist both experienced and inexperienced attorneys.

Reporting: With the assistance of ILS, counties and providers with finalized plans will be required to produce annual reports that assess and document how title IV-E funds have been used to improve the quality of representation.

Localities and providers will be free to consult with ILS at any time regarding implementation of the plan. ILS will remain responsive to problem-solve and, if necessary, help to modify the finalized plan in a way that comports with the fundamental purpose of enhancing the quality of child welfare parent representation.

Plan Development:

Consultation: To initiate enrollment, a request for consultation that includes the following information must be submitted to ILS by an authorized county or New York City official, or designated employee of the governing body of the applicant:

1. The names and contact information for the leader(s) responsible, pursuant to County Law article 18-B, for delivering family court-mandated representation in the locality (i.e., public defender, conflict defender, assigned counsel program administrator, Legal Aid Society)
2. An outline of how the locality provides parent representation, i.e., a complete list of public defenders, assigned counsel panel administrators, and contacts at legal services organizations with which the county or city has contracted to provide representation
3. An estimate of the number of attorneys and other professional staff currently providing parent representation in child welfare matters (including the number of full-time positions and part-time positions)
4. An estimate of the number of new Family Court Act Article 10 petitions filed in each of the previous three years
5. An estimate of the local expense of providing Article 10 representation in the previous calendar year

⁶ Administration for Children and Families, Children's Bureau, *Child Welfare Policy Manual* (CWPM), Section 8.1 Title IV-E, Subsection 8.1H, Administrative Functions/Costs, Training; See Question 8.
https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=116.

Stakeholder Convening and Needs Assessment: Upon receipt of the consultation request, ILS will meet with the parent representation providers and the applicant's designated representatives to begin the planning process. The providers of parental representation are best positioned to assess deficiencies and set reasonable goals for improvement, and thus will be expected to take the lead in working with ILS to identify areas needing improvement. Representatives from other organizations, county offices, and non-profits may inform the needs assessment discussion as they may be able to offer innovations that are new to the community, commitments that will enhance quality improvement efforts, or both.

Strategic Prioritization of Quality Improvement Needs and Solutions: When a list of needs and resources has been identified, including local plans for possibly expanding future family defense spending, ILS will organize the discussion to prioritize the needs. Measures of success will be developed based on the chosen action item(s).

The following are some examples of options that have been shown to have positive impact on the quality of representation. (Note that this non-exhaustive list is meant to foster discussion after needs have been determined and a training program selected.)

- Adding social workers or parent advocates to legal staff or otherwise ensuring counsel has access to these professionals
- Formalizing an administrative structure to support attorneys and other family defense professionals
- Reducing caseloads for attorneys representing parents in child welfare proceedings
- Providing access to formalized training programs to be offered by defense organizations or agencies
- Providing a plan for access to counsel during the child protective services (CPS) investigation and before a court action has been filed
- Standardizing income eligibility to comply with the ILS *Standards for Determining Financial Eligibility for Assigned Counsel*
- Adding attorneys to existing offices or providing for salary or benefits increases to retain experienced counsel.

Training Agenda: Approved plans must include a description of new training on child welfare law, policy, and procedure in accordance with relevant federal requirements that will be required for attorneys who represent parents in child welfare matters.⁷ In addition to working with the locality and provider(s) to identify tailored training opportunities, ILS will make available an intensive training curriculum to assist both experienced and new attorneys to

⁷ Pursuant to section 474(a)(3)(A) and (B) of the Social Security Act and 45 CFR 1356.60(b), topics can include:

- Permanency planning including using kinship care as a resource for children involved with the child welfare system
- General substance abuse, domestic violence, and mental health issues related to children and families in the child welfare system, if the training is not related to providing treatment or services
- Effects of separation, grief and loss, child development, and visitation
- Communication skills required to work with children and families
- Activities designed to preserve, strengthen, and reunify the family, if the training is not related to providing treatment or services. https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp CWPM 8.1H, Question #8

advocate effectively in accordance with the ILS *Standards for Parental Representation in State Intervention Matters*. Generally, training needs will be met in cooperation with ILS to ensure that they are timely, necessary, and advance the skills of parent representation providers.

Progress Reports: Finally, the plan must contain an outline of the process by which annual and final progress reporting to ILS and OCFS will be done to assess progress towards improved quality (and identify any areas of needed adjustment to the plan).

Final Plan Submission and Implementation: The above process will result in a final ILS-approved plan for each county that will be forwarded to the New York State title IV-E agency, OCFS, for incorporation into the MOU. ILS will assist counties in implementing the finalized plan. Providers are free to consult with ILS at any time regarding implementation of the plan. ILS will help localities and providers modify the finalized plan as needed to comport with the fundamental purpose of improving the quality of parent representation.