

**NUMBER**

#23-68-04

**DATE**

March 10, 2023

**OF INTEREST TO**

County Administration

County Directors

Social Service Fiscal Staff

County Attorneys

State Court Personnel

Private Attorneys

**ACTION/DUE DATE**

Please read information

**EXPIRATION DATE**

March 10, 2025

## Independent Parent Legal Representation

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### TOPIC

Title IV-E federal policy change allows states to request reimbursement for a portion of eligible costs associated with providing attorneys for parents in child protection cases in district court.

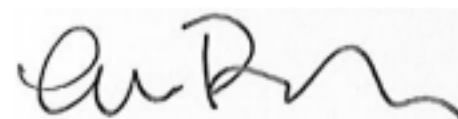
### PURPOSE

Provide guidance on how to access Title IV-E reimbursement for counties who decide to participate in the Independent Parent Legal Representation Program.

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### SIGNED



TIKKI BROWN

Assistant Commissioner

Children and Family Services Administration

### TERMINOLOGY NOTICE

The terminology used to describe people we serve has changed over time. The Minnesota Department of Human Services (DHS) supports the use of "People First" language.

# I. Background

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## A. Federal Policy Change

In January 2019, the Administration for Children and Families Children's Bureau changed federal policy in [section 8.1B of the Child Welfare Policy Manual](#) (CWPM), adding question and answer #30, to allow states to submit claims for a portion of costs related to legal services provided by an attorney representing a parent in child protection proceedings. This change was consistent with the information in federal publication [ACY CB-17-02-IM-17-02](#), which includes research showing that early appointment high quality legal representation can improve case planning, expedite permanency and lead to cost saving for counties ([Technical Bulletin-FAQs on Independent Legal Representation](#)).

Studies have shown when parents were represented by a team with a multi-disciplinary approach, including high quality legal representation, outcomes for children and families improved<sup>1</sup>. Children returned safely to the families more quickly and were placed with relatives in foster care more than twice as often. Permanency outcomes were achieved at a faster rate and in some cases provided services which prevented the need for foster care placement.

The goal of Minnesota's participation is an opportunity to promote better outcomes for families involved in child protection matters by supporting high quality independent parent legal representation. Title IV-E administrative funds may offset eligible costs for independent parent legal representation when a court case involves a foster care candidate and/or child in foster care [\[45 C.F.R. 1356.60\(c\)\(2\)\(ii\)\]](#). Candidates for foster care are defined as children at imminent risk of removal, absent reasonable efforts to prevent out-of-home placement [\[Social Security Act § 472\(i\)\(2\)\]](#).

Federal reimbursement to support an attorney providing independent parent legal representation is not limited to administrative costs for attorneys, but may also include eligible costs associated with office support staff, overhead expenses, paralegals, investigators, peer partners or social workers that support the attorney in providing high quality legal representation at all stages of child protection legal proceedings [\[45 C.F.R. 1356.60\(c\)\(2\)\(ii\)\]](#).

## B. Cost allocation plan amendment

States must submit an amendment to their cost allocation plan for federal approval to access federal Title IV-E reimbursement. The Minnesota Department of Human Services (department) submitted an amendment in 2018 and received federal approval in June 2022. This allows the department to offer the Independent Parent Legal Representation Program statewide to counties that are interested. Another cost allocation plan amendment is required to allow expansion of Title IV-E reimbursement for eligible claims for parent legal representation for children and tribes.

## C. Minnesota

The Minnesota Board of Public Defense represented parents who qualified for a public defender in child protection proceedings until 2008<sup>2</sup>, when funding from the state legislature ended, and the cost of

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<sup>1</sup> [Gerber, Lucas & Pang, Yuk & Ross, Timothy & Guggenheim, Martin & Pecora, Peter & Miller, Joel. \(2019\). Effects of an interdisciplinary approach to parental representation in child welfare. Children and Youth Services Review. 102.](#)

<sup>2</sup> [Report of Children's Justice Initiative Parent Legal Representation Workgroup to Minnesota Judicial Council, November 2008](#)

providing legal representation for parents in child protection proceedings was transferred to county boards<sup>3</sup>.

Beginning in 2021, counties have been required to provide court-appointed counsel for eligible parents at the initial child protection court hearing called the emergency protective care (EPC) hearing. To support this new requirement, the legislature appropriated an annual amount of \$520,000 of general funds to provide county agencies with an allocation to offset county board costs for this new expense. [DHS Bulletin 22-32-04C](#). The state allocation may be used as the non-federal share for independent parent legal representation Title IV-E claims.

## D. Pilot program

The department, Hennepin County Adult Representation Services (ARS), and Hennepin Health and Human Services (HHS), collaborated on a pilot project to explore the feasibility of accessing federal reimbursements for independent parent legal representation, with a goal of expanding statewide upon approval of the cost plan amendment by our federal partners.

Hennepin County executed a Title IV-E administrative agreement between ARS and HHS in September 2019. Execution of this agreement is a federal requirement. In December 2019, department staff submitted a request for federal approval of these new claims. The department received approval to allow the Hennepin County Adult Representation unit to begin receiving federal reimbursement effective Jan. 1, 2020. In June 2022, the department was notified of final federal approval for statewide implementation.

### 1. Initial Hennepin County program results

Hennepin County Adult Representation Services (ARS) has utilized the reimbursement provided by Title IV-E to expand services beyond the attorneys' representing parents. The money gained through Title IV-E reimbursement has provided the opportunity to hire more attorneys, lowering their caseloads, as well as fund several new paralegals to support the attorneys.

Hennepin County Adult Representation Services further expanded the multidisciplinary support by adding legal services specialists. Legal services specialists mainly come from backgrounds of social worker or licensed alcohol and drug counselors. They provide an intensive wrap around service, assisting the family throughout the duration of the case. Legal services specialists become involved in a case when a gap in services or a complexity is identified. The specialists continue to connect parents with needed services and provide a crucial role of emotional support for parents facing unknown circumstances. Due to the close working relationship with parents, the legal services specialists have also provided support to strengthen the relationship between clients and attorneys. Case managers have also been added as a part of the team approach to managing cases. Case managers are involved for a short time to support parents with specific needs during the case.

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<sup>3</sup> [Minn. Stat. § 260C.163](#)

## E. Parent attorneys

Early appointment of quality representation in child protection proceedings can improve outcomes for families served, ensuring relevant information is provided to the court and parties' legal rights are protected. High quality representation has also led to:

- increase in party perceptions of fairness,
- increase party engagement in case planning, services, and court hearings,
- more personally tailored and specific case plans and services,
- increases in visitation and parenting time,
- expedited permanency, and
- reduction of time children and youth spend in care.

Attorneys providing legal representation to parents should be well-trained and knowledgeable not only of child welfare law, but also child development and trauma, in addition to litigations skills and understanding the importance of out of court efforts, such as:

- time spent getting to know the strengths, needs and wishes of children, youth, and parents,
- out of court advocacy for services, benefits, and resources,
- participation in case planning meetings,
- meetings with important collateral contacts such as medical providers, counselors, treatment providers, family members and friends of the parent, and other important people in their lives,
- other efforts to advance critical child and parent safety, permanency, and well-being needs. ([ACYF-CB-IM-17-02](#))

High quality legal representation consists of more than preparing for and representing a parent in court. The work outside of the courtroom is as important to building trusting and supportive relationships with parents, and to understand the clients' goals, as is providing counsel on legal matters. Reimbursements from Title IV-E could be used to further support training and consultations with parents' attorneys. Reinvesting in the independent parent legal representation program, furthers the goal of high-quality representation which creates better outcomes for families. Best practice is to have attorneys who have received specialized training and certification in child protection cases. For example, the National Association of Counsel for Children (NACC) provides an online "[Red Book Training Course](#)", requiring an examination for certification as a Child Welfare Law Specialist (CWLS).

## II. Definitions

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The following definitions apply in order for counties to receive reimbursement from Title IV-E.

### A. **Parent** [Minnesota Statutes, section 260C.007, subdivision 25](#)

A parent is defined according to [Minn. Stat. § 260C.007, subd. 25](#) and an individual who qualifies for a public defender according to [Minn. Stat. § 611.17](#).

### B. **Title IV-E foster care candidate** [Social Security Act § 472\(i\)\(2\)](#)

A candidate for foster care is a child who is at imminent risk of removal from home as evidenced by a county making reasonable efforts to prevent removal. A county can determine a child to be foster care

candidate by completing [DHS-5410-ENG](#) form. Note: This is different from the Family First prevention candidacy.

### C. Foster care [Minnesota Statutes, section 260C.007, subdivision 18](#)

(a) "Foster care" means 24-hour substitute care for a child for whom a responsible social services agency has placement and care responsibility and:

- (1) who is placed away from the child's parent or guardian in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities not excluded in this subdivision, childcare institutions, and pre-adoptive homes;
- (2) who is co-located with the child's parent or guardian in a licensed residential family-based substance use disorder treatment program as defined in subdivision 22a; or
- (3) who is returned to the care of the child's parent or guardian from whom the child was removed under a trial home visit pursuant to Minnesota Statutes, section [260C.201, subdivision 1\(a\), \(3\)](#).

(b) A child is in foster care under this definition regardless of whether the facility is licensed, and payments are made for the cost of care. Nothing in this definition creates any authority to place a child in a home or facility that is required to be licensed which is not licensed. "Foster care" does not include placement in any of the following facilities: hospitals, inpatient chemical dependency treatment facilities where the child is the recipient of the treatment, facilities that are primarily for delinquent children, any corrections facility or program within a particular correction's facility not meeting requirements for Title IV-E facilities as determined by the commissioner, facilities to which a child is committed under the provision of chapter 253B, forestry camps, or jails. Foster care is intended to provide for a child's safety or to access treatment. Foster care must not be used as a punishment or consequence for a child's behavior.

## III. Types of data collected and retained

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For counties interested in participating in the Independent Parent Legal Representation Program there are types of data that need to be collected and retained. Making sure confidential data is protected is an important part of the process. Preserving the attorney-client privileged information improves the high quality representation and relationship between the parent and their attorney. Contracts between the county board/county administration, and private attorney allows for sharing data required for Title IV-E claiming and reporting ([ACYF-CB-PI-20-09](#)). Only a Title IV-E agency can submit claims, and a Title IV-E administrative agreement is required for the local Title IV-E agency (social services) to submit the claims.

### A. Parent attorney data

- Name of attorney and date appointed by court.
- Date appointment ended.
- Name and date of birth of parent who is being represented.
- Eligible parent legal representation reimbursement costs are available for the preparation of and participation in all stages of child protection proceedings which include but not limited to
  - Order to show cause hearings
  - Emergency protective care hearings

- Voluntary and involuntary foster care placement proceedings
- Truancy proceedings
- Runaway proceedings
- Permanency proceedings
- Appeal proceedings

## B. Child foster care/candidacy data

- Name of parent represented to establish relationship.
- Name and date of birth of child (0-21 years).
- Placement status: in-home with parent or placed in foster care.
  - In-home: protective supervision
    - Complete [DHS-5410-ENG](#) Title IV-E Foster Care Candidacy Eligibility Determination Form.
    - Date candidacy was determined (not Family First prevention candidacy).
  - Foster care:
    - Date child entered foster care
    - Date child exited foster care and returned home – if court case remains open and parent/s continues to be represented foster care candidacy determination could be completed.

## IV. Reimbursement and claiming process

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The intended purpose of this federal reimbursement is to improve outcomes for families and parents involved in child protection proceedings by supporting high quality independent parent legal representation. Counties currently have the responsibility of paying for parent representation, and the department recognizes that there are variations in how counties have structured their processes. Dependent upon the current structure and process of the individual county, some adjustments may need to be made when building an independent parent legal representation program to meet the requirements of the program. More information about how tribes may be able to access independent parent legal representation will be coming in the future.

To allow federal Title IV-E reimbursement of eligible costs, the following components are required:

- Determine role and responsibilities
- Title IV-E administrative agreement
- Data privacy issues
- Conflict of interest issues
- Identification of eligible activities/staff
- Methodology for claiming reimbursement
- Determine the method

### A. Determine role and responsibilities

To create an independent program, the following roles have been identified as necessary in order for counties to participate. The program must be established separately from the social service agency and county attorney's office. This requires a separate public agency of the county to be involved in managing the contracted attorneys.

- Identify parent representation contact agency; for most counties it is contracted private attorneys who represent parents in child protection proceedings.
- Designate county agency responsible for Title IV-E reporting, claiming, reimbursing, and determining foster care candidacy. This is the local county social services agency.
- Collaborate on development and design of exchange of information, data collection and retention responsibilities, and other procedures among entities.

## B. Title IV-E administrative agreement

Title IV-E administrative agreements are used to delegate parts of the duties, the authority, and responsibility to another public entity. All claiming must go through the local Title IV-E agency and the agreement must provide specifics about the Title IV-E services being provided. The department has drafted a template agreement for agencies to use. No claims can be submitted until all parties have signed the agreement. This is necessary to ensure there are no conflicts of interest by removing the local social service agency from the independent legal representation program.

## C. Data privacy Issues

The public entity, who is the party to the Title IV-E administrative agreement, must keep and store data received from the parent's attorney separate from other parties of the child protection court actions. In the event of a federal audit records must be complete and stored by the department overseeing the program.

## D. Conflict of interest issues

The public entity responsible for providing legal representation and party to the Title IV-E administrative agreement must be independent from the social services agency and the county attorney offices representing social services, as well as the guardian ad litem program, judicial officers, and children's attorney.

## E. Identification of eligible activities/staff

Title IV-E administrative reimbursement can be claimed for legal services provided by an attorney representing a parent to prepare for and participate in all stages of foster care legal proceedings [\[45 C.F.R. 1356.60\(c\)\(2\)\(ii\)\]](#). Foster care legal proceedings include cases under protective supervision where a child is foster care candidate (DHS Bulletin 16-68-03), or a child has been removed from the home. Title IV-E agencies are allowed to claim Title IV-E administrative costs of paralegals, investigators, peer partners or social workers, office support staff, and overhead expenses of an attorney who providing independent parent legal representation, preparing for and participating in foster care legal proceedings. A multidisciplinary team supporting an attorney can be highly effective in complementing a high-quality attorney representing parents, leading to improved timely outcomes for families.

## 1. Examples of allowable administrative activities for independent attorneys (ACYF-CB-IM-21-06)

- Independent investigation of the facts of the case, including interacting with law enforcement
- Meeting with clients or making home or school visits
- Attending case planning meetings,
- Providing legal interpretations,
- Preparing briefs, memos, and pleadings,
- Obtaining transcripts,
- Interviewing and preparing their client and witnesses for hearings,
- Hearing presentation,
- Maintaining files,
- Supervising attorneys, paralegals, investigators, peer partners or social workers that support an attorney in providing independent legal representation to prepare for and participate in all stages of foster care legal proceedings,
- Filing child abuse and neglect petitions for candidates for foster care,
- Court fees to file a petition for a judicial determination required under Title IV-E, and
- Appellate work in reference to foster care legal proceedings.

## F. Methodology for claiming reimbursement

Department staff uses a federally approved cost allocation methodology for determining how to establish the amount of Title IV-E reimbursement. By applying a Title IV-E ratio means individual child Title IV-E eligibility determinations are not required resulting in significantly reducing the amount of administrative effort to participate in the program.

### 1. Reimbursement components

- Title IV-E administrative reimbursement claims must be attributed to a child who is in foster care or a foster care candidate.
- The parent receiving legal representation must meet the definition of a parent under [Minn. Stat. § 260C.007, subd. 25](#).
- The entity within the county (county administration) that is paying for parent legal representation in child custody proceedings receives the Title IV-E reimbursement.
- Title IV-E administrative agreement must be in effect to receive Title IV-E funds.
- Title IV-E is a reimbursement program, costs are paid up front and then submitted for eligible federal reimbursement.
- Counties must follow federal policy regarding reporting and claiming guidance and requirements.
- Counties must follow the federally approved cost allocation methodology.

## Americans with Disabilities Act (ADA) Advisory

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This information is available in accessible formats for people with disabilities by calling (651) 431-4670 (voice) or by using your preferred relay service. For other information on disability rights and protections, contact the agency's ADA coordinator.