



[www.childlawpractice.org](http://www.childlawpractice.org)

January 30, 2019

*The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and accordingly, should not be construed as representing the policy of the American Bar Association.*

## **Claiming Title IV-E Funds to Pay for Parents' and Children's Attorneys: A Brief Technical Overview**

by Mark Hardin

For the first time, states can now claim federal matching funds through Title IV-E of the Social Security Act to help pay the costs of attorneys representing certain children and their parents in child welfare legal proceedings.<sup>1</sup> Before this change, federal matching funds were available to help pay for attorneys representing child welfare agencies, but not for children's or parents' attorneys. The following brief overview explains federal foster care matching funds as they relate to payments for parents' and children's attorneys.

This article is intended for people not familiar with rules of Title IV-E eligibility or the processes for claiming Title IV-E funds. It provides general background to assist courts and legal organizations as they seek to partner with child welfare agencies in leveraging this new source of federal support for child and parent representation.

### *Basic Explanation of Title IV-E Matching Funds*

There are two principal categories of Title IV-E matching funds:

1. "Foster care maintenance payments" are payments to caregivers of eligible foster children. The federal government pays a percentage of the state payments to such caregivers.
2. "Administrative costs," generally speaking, pay for the administration and operation of the foster care system, encompassing many expenses incurred by the state child welfare agency, such as for agency staff, buildings, administration, and related contracts.

The federal government pays 50 percent of the share of administrative costs claimed for each Title IV-E eligible child. As the result of the recent policy change, states can now seek administrative cost reimbursement from the federal government to pay half of the cost of attorneys for children who are eligible for Title IV-E foster care benefits—and half of the cost of attorneys for their parents.

## *U.S. Children's Bureau Policy*

On January 7, 2019, the federal Children's Bureau changed the Child Welfare Policy Manual Q/A 8.4B to remove question 18 and replace it with a new question 20. The following language reflects that change

We want to notify you of a change to the Child Welfare Policy Manual (CWPM).

We will remove CWPM Q/A 8.4B #18 and add the following new Q/A to section 8.4B:

*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.

**Scope of Funding:** This language authorizes federal matching funds to help pay for the independent legal representation of parents and children and makes those funds available for "all stages" of foster care legal proceedings, i.e., the entire court process. This presumably begins when the case is first brought to the attention of the parent or child's attorney through the time the case is terminated following the child's return home, adoption, guardianship, or aging out of the court process.

The above language from the *Policy Manual* doesn't address availability of federal matching funds to pay for training of parents' and children's attorneys because federal statutes had already made clear that matching funds are available for their training. 42 USC 674(a)(3)(B). Under that statute, federal administrative matching funds for training also include training for CASA volunteers, guardians ad litem, and court staff.

**Agency Precedent:** These matching funds were already available for the cost of agency attorneys, so there is precedent regarding the process through which these funds are claimed. Courts and legal organizations should look to the agency to learn how they have documented and

claimed funding for attorneys representing the agency. If one's state has never claimed these funds, it may be necessary to look to a neighboring state.

**Claiming Funds:** Only the Title IV-E agency—and not courts or legal organizations—can claim the matching funds from the federal government. Note the highlighted wording at the beginning of the question preceding the policy change:

*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?*

Accordingly, to receive these matching funds, courts or a public entity providing legal representation must reach an agreement with the state child welfare agency. To put it another way, the agency must claim the funds from the federal government through an agreement with the court or public entity providing legal representation then pass through the funds under that agreement. Whether there is one or multiple contracts will depend on the state. In any case, under such an agreement, the courts or other public entities must document the costs of the attorneys in a format that allows the child welfare agency to meet federal reimbursement requirements.

The *Policy Manual* requires agencies, in passing through these funds, to respect the autonomy of attorneys representing parents and children:

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...*” (emphasis added).

The words “independent legal representation” make clear that, in claiming the matching funds, the agency cannot limit or compromise the independence of the attorney. And the words “all stages of foster care legal proceedings” mean the agency cannot limit the time or scope of legal representation.

#### *Calculating the Amount of Federal Matching Funds to Cover the Costs of Attorneys for Parents and Children*

**Eligibility:** Not all children in state supervised foster care are eligible for Title IV-E matching funds. Whether a child is eligible for such payments depends on the financial circumstances of the parents or relatives from whom the child was removed. A complicated set of criteria governs such eligibility.

**Calculation Criteria:** States cannot claim either category of Title IV-E matching funds for non-Title IV-E eligible children, either to pay caregivers or for administrative costs. This means under the new policy, the federal government will not pay for half the cost of representation for *all* foster children and their parents but will pay for the cost of child and parent legal representation based on a state's proportion of foster children eligible for Title IV-E.

Accordingly, to calculate the full amount of federal assistance available to help pay for foster children's and their parents' attorneys, it is necessary to know the proportion of foster children who are Title IV-E eligible. The percentage of states' foster children who meet Title IV-E eligibility requirements on a given day varies widely from state to state, ranging from less than 25% to over 75%. This percentage is sometimes referred to either as a state's Title IV-E "coverage rate" or "penetration rate."

To summarize, the overall amount of federal matching funds available for attorneys for parents and children is based on two factors: the Title IV-E "penetration" or "coverage" rate (percentage of children in care eligible for Title IV-E benefits) and the administrative cost match.

**Sample Calculation:** An oversimplified calculation of a hypothetical state's available reimbursement for the costs of foster children's and their parents' attorneys is as follows:

- a. Calculate the total cost of representing foster children and their parents.
- b. Multiply (a) by the state's Title IV-E coverage (penetration) rate for foster care.
- c. Multiply (b) by 50%.

Here is an example involving both calculations:

State x spends \$5 million in one year for legal representation of foster children and their parents. 40% of its foster children are eligible for Title IV-E reimbursements. Thus, the amount of available federal foster care matching funds for parent and child legal representation in state x can be calculated as:  $\$5,000,000(.4)(.5) = \$1,000,000$ . This means that under the new federal policy by paying \$5,000,000 for child and parent legal representation from its own budget state x will now be able to contribute \$6,000,000 to child and parent representation in total, representing a 20% increase in its investment in legal representation based on the additional federal support.

#### *Federal Matching Funds to Help Pay for Training of Attorneys for Parents and Children*

Federal matching funds to pay for the cost of representation should be distinguished from matching funds to pay for training of attorneys and their staff. Title IV-E matching funds for training of attorneys for parents and children have been available before the recent policy change, and the rate of reimbursement for training is 75 percent.

**Eligibility:** As with matching funds for other administrative costs, the costs of training only apply to attorneys for Title IV-E eligible children.

**Criteria:** While claiming and calculating federal matching funds for training is complicated, courts can usually rely on child welfare agencies to help with technical requirements. However, courts and legal organizations do need to understand that Title IV-E funds can be claimed only to match state funds. That is, Title IV-E funds must be "matched" by state funds and not funds from other federal sources. For example, if a state is using Court Improvement Program funds (Title IV-B, Part 2) for training, it can't claim Title IV-E funds to match a percentage of that amount.

**Sample Calculation:** Here is a simplified calculation of federal matching funds for training of parent and children's attorneys in foster care cases:

- a. Calculate the training costs for foster children's and their parents' attorneys.
- b. Multiply (a) by the state's Title IV-E "coverage" rate for foster care.
- c. Multiply (b) by 75%.

Consider the following hypothetical: State x spends \$100,000 in a year for foster care training costs. The Title IV-E coverage rate for foster children is 40%. Therefore, federal matching funds available for training can be calculated as:  $\$100,000(.4)(.75) = \$37,500$ .

#### *Creating a Process to Claim and Disburse Matching Funds*

Only the state agency administering the Title IV-E State Plan (i.e., the state child welfare agency of an umbrella state agency) can claim the federal matching funds for parents' and children's attorneys. That is, the state agency must claim the funds on behalf of a state or local program providing representation.

**Requirements:** Accordingly, to receive the matching funds, the government program providing representation for parents and children must enter into an agreement with the state agency administering the Title IV-E plan. In the agreement, which may take the form of a Memorandum of Understanding, the public organization providing representation must agree to document the costs of representation in a way that satisfies the requirements of the Title IV-E agency. The Memorandum of Understanding should specify that attorneys for parents and children will provide independent representation of their clients, consistent with their ethical obligations as attorneys.

**Sample Process:** The process for reporting, claiming, and disbursing the Title IV-E matching funds for the representation of parents and children and training of attorneys can be something like:

- a) the public entity providing legal representation of parents or children documents its costs to state agency administering Title IV-E;
- b) the Title IV-E agency includes the sum in its larger claim to the federal government for Title IV-E matching funds;
- c) the federal government pays the matching funds to the Title IV-E agency; and then
- d) the Title IV-E agency disburses to the legal representation program its proportionate share.

A Memorandum of Understanding (MOU) can specify details of the process as they apply in the state. It can set forth a timeline for the steps of the process and can specify how state and federal legal requirements will be met. The MOU can also call for other forms of collaboration between the agency and the public entity providing representation, so long as such collaboration is consistent with the ethics of legal practice.

#### *Practice Concerns*

Some practical concerns courts and legal organizations should think about when seeking to partner with child welfare agencies to draw down new federal resources for child and parent counsel include:

1. How can we highlight the improved outcomes for children and families that arise from increased investments in child and parent counsel?
2. What different models of agreements with the Title IV-E agency may be best in your state?
3. What is the process to collect and disburse the funds?
4. How can we ensure the new funds are used to augment not supplant existing state and county investments in child and parent counsel?
5. How can we use the new funds as a catalyst for systemic improvements in representation, including models of multidisciplinary representation (attorney, social worker, investigator, peer advocate) and pre-petition representation. (Note that the costs of social workers to assist attorneys for parents and children can't be included in claims for Title IV-E administrative costs.)

*Mark Hardin, JD*, served for almost 30 years on the staff of the ABA Center on Children and the Law as director of child welfare. Mark has long been recognized as an early innovator in the child welfare legal field. His research and scholarship and his work on legislative, regulatory, and court rule reform affecting abused and neglected children helped shape child welfare legal policy and practice.

Related Links:

For information about why investing in child and parent counsel is so valuable, see the ABA Center on Children and the Law's [Legal Representation Infographic](#).

For an overview of research on the impact of child welfare representation on child welfare outcomes, see the Family Justice Initiative's chart [Research on Child Welfare Representation in Child Welfare Cases](#).

[ABA President's recent statement commending the Child Welfare Policy change](#)

---

<sup>1</sup> U.S. Department of Health & Human Services, Administration for Children & Families, Children's Bureau. "[8.1B TITLE IV-E, Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program](#)" *Child Welfare Policy Manual*.