

## CLC PRACTICE POINT

No. 21

November 14, 2011

### Child Family Services Improvement and Innovation Act

*By: Frank DiPietro, William Mitchell Law School Student (J.D. Candidate 2014), Jenna Skees, Hamline University Law School Student (J.D. Candidate, 2013) and Anne Tyler Gueinzus, Managing Attorney.*

On September 30, 2011, President Obama signed H.R. 2883, otherwise known as the Child and Family Services Improvement and Innovation Act, into law. This new legislation, hereinafter "Child and Family Services Act" or "the Act", primarily addresses reauthorization and modification of child and family service programs under Title IV-B and Title IV-E of the Social Security Act and is relevant to all CLC clients. Title IV-B programs are federal programs focused on preventing child abuse and neglect as well as providing services to families once a finding of child abuse and neglect is substantiated. Title IV-E provides federal funding to states with children in foster care. The Child and Family Services Act provides new requirements for states to receive federal funding under Title IV-E of the Social Security Act and thereby can affect various state child protection practice and policies. This practice point focuses on those noteworthy sections of this new legislation for CLC clients.

#### Trauma

State Child Welfare Services (CWS under Part 1 of Title IV-B) currently develop, in consultation with pediatricians and other health care experts, plans for the ongoing oversight and coordination of health care services for children in foster care placements. The Child and Family Services Act has amended section 42 U.S.C. § 622 (B)(15)(A)(ii) to now read:

*[H]ow health needs identified through screenings will be monitored and treated, including emotional trauma associated with a child's maltreatment and removal from home[.]*

Thus, the new legislation now requires Child Welfare Services to take into account the emotional trauma associated with a foster child's maltreatment and removal from home. As a result, CLC attorneys should ensure their clients are receiving the appropriate levels of trauma-based mental health care from the responsible county agencies in their individualized health care case plans. For additional information on how trauma can affect your clients, please review CLC's practice point on this issue from September 2010 at: <http://www.clcmn.org/wp-content/uploads/2009/06/Practice-point-9.10.pdf>.

#### Psychotropic Medications

The Child and Family Services Act also requires explicit protocols in a foster care child's health care plan, which can be found in the last section of a child's out of home plan, for the appropriate use and monitoring of psychotropic medications. See 42 U.S.C. § 622 (b)(15)(A)(v). Monitoring the usage of psychotropic medications as well as the development of protocols in the health care case plan has clearly been emphasized in this new federal legislation. If your client is currently prescribed psychotropic medications, please ensure that appropriate monitoring guidelines and protocols are being established for your client. For a more detailed discussion regarding appropriate guidelines and protocols for psychotropic medications, please see CLC's practice point on this issue from September 2011 at: <http://www.clcmn.org/wp-content/uploads/2009/06/Sept-2011-Practice-Point.pdf>.

## **Social Worker Visits**

Currently, Minnesota requires monthly social worker visits to the home. Minn. State §260C.212, Subd. 4a (2010). The new federal legislation also emphasizes this requirement:

*Each State shall take such steps as are necessary to ensure that the total number of visits made by caseworkers on a monthly basis to children in foster care under the responsibility of the State during a fiscal year is not less than 90 percent (or, in the case of fiscal year 2015 or thereafter, 95 percent) of the total number of such visits that would occur during the fiscal year if each such child were so visited once every month while in such care.*

42 U.S.C. 624 (f)(1)(A). CLC attorneys should continue to confirm their clients are being visited monthly by their assigned county workers.

## **Education Stability for Foster Care Youth**

The Child and Family Services Act has amended Congress' 2008 Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections) to require educational stability for each foster care placement. 42 U.C.S 675 (1)(G). Previously, Fostering Connections required state child welfare agencies to coordinate with local education agencies to ensure foster children remained in the same school they were enrolled in at the time of their initial placement. *Id.* The amendment now requires this collaboration to continue with each placement move. This requirement to facilitate education stability for every foster care placement is critical for foster youth to ensure they do not face continued education delays in having to enroll at new schools and miss school during the process. For a more detailed discussion on Education Advocacy, please see CLC's recent July 2011 practice point at: <http://www.clcmn.org/wp-content/uploads/2009/06/July-2011-Practice-Point2.pdf>.

## **Foster Youth Identity Theft**

The Child and Family Services Act also added a new section to 42 U.S.C. 675(5) concerning foster youth identity theft. The new language provides that:

*[E]ach child in foster care under the responsibility of the State who has attained 16 years of age receives without cost a copy of any consumer report (as defined in section 603(d) of the Fair Credit Reporting Act) pertaining to the child each year until the child is discharged from care, and receives assistance (including, when feasible, from any court-appointed advocate for the child) in interpreting and resolving any inaccuracies in the report.*

Thus, CLC attorneys will need to pay special attention to their older clients' credit history. Please ensure that you are receiving your clients' credit reports, reviewing them with your clients and that any and all inaccuracies contained in those reports are corrected.

As mentioned in our April 2011 practice point, "Identity Theft and Your Client," CLC feels it is important that you counsel your client on how to prevent, detect and recover from identity theft. Identity theft issues can be complex, expensive and time consuming. As a result, CLC envisions that its volunteer attorneys will be particularly proactive and persistent when working with the court and social service agencies on this issue. Please note the following link to CLC's practice point on this issue: <http://www.clcmn.org/wp-content/uploads/2009/06/APRIL-2011-Practice-point.pdf>.

## **Permanency Projects & Family Involvement**

The new legislation also provides a variety of funding opportunities for demonstration projects to address permanency and child welfare improvement plans. Specifically, the Child and Family Services Act allows state governments to promote and conduct demonstration projects to meet at least one of the following goals:

*(I) Increase permanency for all infants, children, and youth by reducing the time in foster placements when possible and promoting a successful transition to adulthood for older youth.*

*(II) Increase positive outcomes for infants, children, youth, and families in their homes and communities, including tribal communities, and improve the safety and well-being of infants, children, and youth.*

*(III) Prevent child abuse and neglect and the re-entry of infants, children, and youth into foster care.*

42 U.S.C. 1320 a-9(3)(A)(i).

Additionally, the Act also permits additional funding to state courts to promote family involvement in child welfare, family preservation, concurrent planning, family reunification, and adoption. 42 U.S.C. 629 h. The Act also promotes funding for increasing and improving engagement of the entire family in court processes. Id. Permanency planning and decreasing the number of children who re-enter back into the foster care system are of vital importance to CLC's clients. Finding a stable and secure permanent placement for a foster care youth is a time consuming process. It requires careful and deliberate planning that should include the youth. Completing the necessary groundwork to ensure a stable placement that does not disrupt and return the child to care is critical. CLC attorneys should ensure that all of a client's family members are explored as potential resources or supports and, if willing, are engaged in the process. For a more detailed discussion of permanency options, please read our February 2011 practice point at: <http://www.clcmn.org/wp-content/uploads/2009/06/Practice-Point-13-Feb-2011.pdf>.

## **Transitioning**

The new federal legislation also requires state child welfare services to provide programs that provide for the transition of foster care children out of the system through adulthood. The Act requires the following:

*The establishment of procedures designed to assist youth as they prepare for their transition out of foster care, such as arranging for participation in age-appropriate extra-curricular activities, providing appropriate access to cell phones, computers, and opportunities to obtain a driver's license, providing notification of all sibling placements if siblings are in care and sibling location if siblings are out of care, and providing counseling and financial support for post-secondary education.*

42 U.S.C. 1320 a-9 (7)(H). This section is particularly important to CLC attorneys representing older foster care youth as it provides a variety of topics for the court and child protection agencies to address. CLC attorneys should ensure their clients' needs in any of the above-referenced areas are being appropriately addressed. Please also see our initial practice point in February 2010 about representing older foster care youth at: <http://www.clcmn.org/wp-content/uploads/2010/02/February-Practice-Tip.pdf>.

As foster care youth approach adulthood, often there is a desire to reconnect with biological family members. The new Act recognizes this desire and notes that specific State procedures are needed to address these reconnections. The specific language for these state procedures is as follows:

*[E]nsuring that youth in foster care who have attained age 16 are engaged in discussions, including during the development of the transition plans required under paragraphs (1)(D) and (5)(H) of section 475 [42 USCS § 675], that explore whether the youth wishes to reconnect with the youth's biological family, including parents, grandparents, and siblings, and, if so, what skills and strategies the youth will need to successfully and safely reconnect with those family members; (ii) providing appropriate guidance and services to youth whom affirm an intent to reconnect with biological family members on how to successfully and safely manage such reconnections; and (iii) making, when appropriate, efforts to include biological family members in such reconnection efforts.*

42 U.S.C. 1320 a-9 (7)(I). This new provision places a burden on state child welfare agencies to not only determine whether a foster care child wishes to reconnect with biological family members, but also to provide guidance on these reconnection efforts. CLC attorneys should explore their older clients' wishes regarding contact with biological family members. If a CLC client desires familial contact, the attorney should advocate that the client's wishes for biological family reunification are addressed through the development of realistic contact plan that includes appropriate services and the client's input.

**The Child and Family Services Improvement and Innovation Act is exciting new legislation that provides increased opportunities for better services as well as innovative ideas for better outcomes for our clients.**

**As always, please do not hesitate to contact CLC with any questions or concerns regarding the issues raised in this practice point or regarding your CLC clients. Thank you for your commitment to your CLC clients.**