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MEMORANDUM

TO: Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System

FROM: Todd A. Landry, Ed.D., Director

SUBJECT: Overview of Title IV-E Funding

DATE: August 18, 2022

A. Overview of Title IV-E: We have been asked to provide a high-level description of how Maine currently uses Title IV-E funds. We have located the “initiative” language below from the most recent biennial budget (Luke Lazure supplied this to Lucia), which provides a high-level description. Is this a good description for us to use? Or do you have something different that would be better?

The description previously supplied to Luke Lazure relates more to specific funding accounts utilized within OCFS. OCFS would suggest that instead of the language provided to Luke the following language be used:

The IV-E Foster Care/Adoption Assistance program provides federal funding based on a state match (FMAP rate) to support the maintenance of children in foster care, foster children in independent living, and adoption assistance for children who were in foster care based on their eligibility as determined under title IV-E of the Social Security Act. The program has three primary functions with some secondary functions under each primary function umbrella:

1) *Funding to support the maintenance needs of children in foster care:* 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 (Currently 70.2% in Maine). The term “foster care maintenance payments” means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, reasonable travel to the child’s home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.

2) *Funding to support IV-E administrative activities:* “Administrative costs” pay for the administration and operation of the foster care system, encompassing many expenses incurred by the OCFS, such as for agency staff, buildings, administration, and related contracts. Federal financial assistance is available at the rate of fifty percent (50%) for administrative expenditures necessary for the proper and efficient administration of the Title IV-E plan. The State’s cost allocation plan identifies which costs are allocated and claimed under this program.

It is important to note that States cannot claim Title IV-E matching funds for Administrative Costs for non-Title IV-E eligible children. The federal government will not pay for half the cost of representation

for all foster children and their parents but will pay for the administrative costs based on a state's proportion of foster children eligible for Title IV-E (Also known as the "Penetration" or "Claimability" rate). To calculate the full amount of federal assistance available to help pay for administrative costs, it is necessary to know the proportion of foster children who are Title IV-E eligible. Maine's penetration rate has averaged 46% in SFY 2022 thus federal participation for each \$1 of costs is \$0.23 (50% X 46%). Within IV-E, the cost of legal representation is considered an administrative cost.

Also included under administrative activities is training for staff and foster parents. Federal financial assistance is available at the rate of seventy-five percent (75%) for these administrative expenditures. Again, the penetration rate must be used to calculate the total Federal assistance.

3) *Title IV-E Prevention Program*: Provides an opportunity for states and tribes to receive federal funding for specific evidenced-based, trauma-informed, and time-limited mental health, substance use, and in-home parenting support services. These services are to be selected from the [Title IV-E Clearinghouse](#) and funded using Title IV-E and State funds as match at a 50% rate. Services are provided to children at *imminent risk of entering foster care* with the goal to prevent the need for removal from the home and are only available to children and families who meet the state's definition of candidacy for prevention services *after an investigation by child welfare is completed*. The Title IV-E Prevention Program was established as a result of the Family First Prevention Services Act (FFPSA), enacted as part of Public Law (P.L.) 115—123.

Title IV-E Funding Questions

1. To date, to what extent has DHHS considered or pursued receiving the IV-E funds for Legal Representation for parents of children and youth who are in foster care (in-placement) and/or children and youth who are candidates for foster care (pre-placement)?

The topic of Legal Representation for parents of children and youth who are in foster care (in-placement) and/or children and youth who are candidates for foster care (pre-placement) had been discussed in the past but was not acted on due to technical challenges associated with federal match reporting, service oversight, contract services management, and funding considerations.

2. What, if any, barriers does DHHS see to Maine receiving/using the IV-E funds for Legal Representation parents of children and youth who are in foster care or who are candidates for foster care?

The most significant barrier to receiving and using IV-E funds for legal representation stems from the fact that OCFS does not pay for these services directly. This creates technical challenges to implementing federal match claiming for this service. OCFS' IV-E program is closely monitored by the federal government and subject to strict audit requirements. Any expenditures found to be out of compliance with IV-E requirements must be repaid by OCFS, even if the error in claiming does not stem from OCFS' work. Thus, OCFS would need to implement significant internal audit procedures to ensure claims are appropriate. This would also increase the administrative burden to the entity overseeing the legal services in order to track and report on costs associated with specific services at a client level for the defined population (keeping in mind that population is children, not adults who are represented by counsel in child protective matters). Audits would be conducted regularly to ensure funds are being claimed only for the specified population and only during the specific time periods of eligibility. OCFS cannot speak to the ability of MCILS to meet these requirements but does believe that were they able to meet these requirements OCFS would require additional staff to prevent errors in claiming and ensure OCFS does not incur any federal audit findings. Ultimately, any errors found on a federal audit would be the responsibility of the Department to repay, even if the issue that resulted in an erroneous claim was on the provider's side.

3. To claim Title IV-E Legal Representation costs, ACYF-CM-IM-21-06 indicates that a state IV-E agency needs to submit an amendment to the state Public Assistance Cost Allocation Plan (PACAP). What is the process for the submission and approval of a PACAP amendment? What is the time frame required for such an amendment? What would be the quickest that could be accomplished?

An amendment to the state’s Title IV-E Plan would be required for any changes in claiming of Title IV-E funds. This process would take at least six months to complete and would require:

- Changes to the existing Title IV-E State Plan
- Obtaining approval from the Governor (required by federal authorities)
- Obtaining approval from the Federal Administration for Children and Families (ACF) (OCFS has no control over this part of the process).

Subsequent to ACF’s approval of the State Plan amendment, the State would then make a request to amend the PACAP to allow for any changes in claiming. Approval of PACAP amendment can take up to a year. OCFS could begin claiming against this amendment immediately upon submission but would do so at significant risk as the amendment could be denied and the Department would be responsible for repaying all federal funding distributed on claims under the proposed amendment.

4. What Legislative actions and/or statutory changes would be necessary for DHHS to be able to use the IV-E funds for the purposes of the pilot program – i.e., to provide pre-placement legal representation to parents of children and youth who are candidates for foster care?

Before Maine can claim any new Title IV-E expenses, the requirements outlined under question three, above must be met. Beyond the ACF approval of the amended State Plan and PACAP, the infrastructure needed to implement and maintain a program would require funding in the budget. Claims for costs associated with legal representation are considered administrative costs, based on Maine’s penetration rate of 46% in SFY 2022 the rate of federal participation for each \$1 of costs incurred by the state is \$0.23 (50% of 46). OCFS would also require additional staff in order to address the challenges outlined in the response to question two.

OCFS cannot speak to the legislative actions and/or statutory changes that might be necessary in order for MCILS and the Maine Judicial Branch to implement such a pilot program.

5. Can you provide the most recent data DHHS has on the percentage of all children in foster care in Maine who are IV-E eligible (the “coverage rate”)?

SFY	Average "Coverage" Rate
2022	48%
2021	46%
2022	46% (YTD)

Note: National average is approximately 50%.

C. “Candidate” for Foster Care Definition Questions

- 1. What is the definition of “candidate” for foster care that applies when determining eligibility for federal financial participation (FFP) for administrative costs under 445 C.F.R. §1356.60(c)—put differently, what is the definition of “candidate” for foster care that would apply if Maine seeks Title IV-E administrative costs reimbursement for the pre-petition legal representation pilot program the Commission is tasked with designing:**

a. Does the Maine definition of “candidate for foster care” for purposes of the Family First Prevention Services Act (FFPSA) apply—*i.e.*, the child must be:

- A child who is a victim of maltreatment in which safety and risk factors can be mitigated by the provision of in-home services and is able to safely remain at home with a child-specific Prevention Plan.
- Pregnant and parenting youth in foster care.
- Children who have exited foster care through reunification, guardianship, or adoptions and may be at risk of re-entry.

See <https://www.maine.gov/dhhs/ocfs/data-reports-initiatives/system-improvements-initiatives/families-first-prevention-act/candidacy>

Or, is that Maine definition of “candidate” specific to Maine’s FFPSA services?

b. Alternatively, does the federal definition on a “candidate for foster care” for general Title IV-E funding purposes apply—*i.e.*, the child must be one who is:

- “at serious risk of removal from the home as evidenced by the Title IV-E agency either pursuing his/her removal from the home or making reasonable efforts to prevent such removal.”

See [ACYF-CB-IM-21-06](#) at p.10 n.40; Children’s Bureau, Child Welfare Policy Manual §8.1D, question 2 (same).

The definition of candidate for foster care as identified in bullet a. above is the definition that Maine developed as required under the Family First Prevention Services Act. This applies to eligibility for those children/families where Maine would be claiming IV-E for specific prevention services (mental health, substance use, and/or in-home skill-based parenting support). Thus, the definition in bullet a. does not apply to the services proposed under this pilot and instead the definition outlined in bullet b. is most appropriate.

If this more general federal definition applies, are you aware of any more specifics to this definition (perhaps from other federal guidance documents) that might restrict the types of families for whom the State could receive Title IV-E administrative costs FFP for providing pre-petition legal representation services?

The Informational Memorandum mentioned above indicates that the child must be *a candidate* for title IV-E foster care or *in Title IV-E foster care*. The candidate for foster care determination is made after an investigation of child abuse and/or neglect is completed by OCFS therefore making the costs associated with legal representation at the onset of an investigation ineligible for IV-E reimbursement.

The Child Welfare Policy Manual is issued by ACF, provides additional specific information about when a child may be considered a candidate for foster care (specifically, see the responses to questions 2, 6, 10, and 11 in [Section 8.1.D of the Child Welfare Policy Manual](#)). Furthermore, even if allowable federally, defining any child involved with a child welfare investigation as a candidate for foster care could have a significant impact on OCFS’ goal of partnering together with families to ensure child safety and wellbeing. In fact, OCFS strives to prevent removal whenever possible, and has implemented Family First services to aid in those prevention efforts.