



Office of Children and Family Services

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Informational Letter

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I. Purpose

The purpose of this Informational Letter (INF) is to provide counties and the City of New York and tribal governments (hereinafter "local governments") with the opportunity to access federal title IV-E funding for certain allowable administrative costs for the legal representation of children and parents.

to claim for title IV-E reimbursement for eligible and allowable administration and training costs associated with providing legal representation services to children and their parents in child welfare proceedings for state fiscal year (SFY) 2021-22. All claims and supporting documentation must be submitted to the New York State title IV-E agency, OCFS.

## II. Background

On January 17, 2017, the Administration for Children and Families (ACF) Children's Bureau within the United States Department of Health and Human Services (DHHS) released an Information Memorandum regarding "High Quality Legal Representation for All Parties in Child Welfare Proceedings," which encouraged all child welfare agencies, courts, administrative offices of the courts, and court improvement programs to work together to ensure that parents, children, youth, and child welfare agencies receive high quality legal representation at all stages of child welfare proceedings.

On January 7, 2019, ACF made an update to the Children's Bureau *Child Welfare Policy Manual* to allow title IV-E reimbursement for certain administrative costs associated with attorneys providing legal representation services to children, and parents in child welfare proceedings. Eligibility requirements for such reimbursement is extended to title IV-E candidates for foster care (pre-placement) and title IV-E foster care children (in placement).

The ACF Children's Bureau *Child Welfare Policy Manual* provided an update on July 26, 2019, which confirmed that the state title IV-E agency, OCFS, may have a memorandum of understanding (MOU) with tribal governments and any other public agency under section 472(a)(2)(B)(ii) of the Social Security Act (SSA) to allow OCFS to claim for title IV-E reimbursement for eligible and allowable administrative and training costs for attorneys providing independent legal representation services for title IV-E foster care candidates (pre-placement), title IV-E foster care children (in placement) and the children's parents served under such MOU. Eligible and allowable costs for attorneys providing independent legal representation services include preparation for and participation in all stages of child welfare-related legal proceedings.

On April 21, 2020, an additional update was made to the ACF Children's Bureau *Child Welfare Policy Manual*. That update further clarified that for the state and public entities administering legal representation services to children and their parents, allowable administrative expenses may include the costs for paralegals, investigators, peer partners, or social workers. However, such supportive legal representation services are only allowable administrative expenses to the extent that they are necessary to support the attorneys in providing independent legal representation to the child and/or the parent(s) to prepare for and participate in all stages of foster care legal proceedings for title IV-E foster care candidates and title IV-E foster care children.

The ACF Children's Bureau released the *Frequently Asked Questions: Independent Legal Representation Technical Bulletin* on July 20, 2020. These questions and answers provided additional clarification on the allowable types of child welfare legal proceedings and administrative and training costs. In addition, it details the information that the state title IV-E agency must include in its approved Public Assistance Cost Allocation Plan (PACAP) related to title IV-E agreements with other public agencies with regard to providing legal representation services to children and their parents.

The ACF released an Informational Memorandum (IM) related to the Title IV-E Federal Foster Care Program on January 14, 2021. This IM, *Utilizing Title IV-E Funding to Support High-Quality Legal Representation and Promote Child and Family Well-Being*, identifies high-quality legal representation for parents, children, and child welfare agencies at all stages of child welfare proceedings as critical to a well-functioning child welfare system.

OCFS will be utilizing this new flexibility on title IV-E reimbursement to enhance the quality of legal representation for children and parents in child welfare proceedings. Pursuant to authority included in Chapter 53 of the Laws of New York 2020, SFY 2020-21, title IV-E reimbursement is allowable for legal representation services for children and parents in child welfare proceedings for title IV-E foster care candidates and title IV-E foster care children, provided the provisions of laws and SFY 2020-21 claiming deadlines are met as well as the terms and conditions in the attached *Memorandum of Understanding* (Attachment A), *Title IV-E Legal Representation Administration and Training Claim Form* (Attachment B), an approved *Enhanced Quality Legal Representation Services Plan* (Attachments C or CI), and the *Federal Award Information Sheet* (Attachment D).

ILS is the state agency charged with monitoring, studying, and making efforts to improve the quality of services for parents in child welfare proceedings. ILS does not provide legal assistance or lawyer referrals to individuals. Rather, it operates pursuant to policies established by the ILS Board to assist county governments and indigent legal services providers in the exercise of their responsibility, under County Law Article 18-B, to provide the effective assistance of counsel to those persons who are legally entitled to counsel but cannot afford to hire an attorney.

Upon approval of a local government's MOU and documentation of engagement with ILS to develop an enhanced quality plan, the entity can be reimbursed for allowable administrative expenses (see Claiming section). However, if plans are not finalized and approved by April 1, 2022, then the entities will not be able to receive reimbursement until such time that their enhanced quality plan is approved in accordance with Attachment C.

The New York State Unified Court System (UCS) administers the Attorney for the Child Program (AFC), operating by and through OCA. The AFC program consists of the administration of contracts with institutional providers of AFC services and the administration through four Appellate Divisions of the Supreme Court, panels of private attorneys, for children involved in New York State Family Court Act (FCA) Article 3, 7, 10, 10-A, 10-B, or 10-C proceedings or proceedings brought pursuant to sections 358-a, 384, or 384-b of the Social Services Law (SSL). OCA, through its AFC program, manages costs associated with the legal representation and training of attorneys for eligible children.

In addition to submission of an approved quality enhancement plan for the AFC program, OCA will establish procedures to report to OCFS the allowable expenditures in the form and manner prescribed by OCFS. If plans are not finalized and approved in accordance with the MOU between OCFS and the UCS, then the entities will not be able to receive reimbursement until such time that their enhanced quality plan is approved in accordance with Attachment C.

### III. Program Implications

Traditionally, title IV-E federal funding has supported children in foster care, adoption, and kinship guardianship, but with this policy change, federal funding is being made available for a wider range of supports to keep families safely together and promote permanency. The goal is to utilize this federal funding opportunity to reinvest into legal representation services for children and their parents to enhance the quality of legal representation services and reduce the need for family separation and foster care.

The availability of title IV-E funding is meant to encourage all child welfare agencies, courts, county governments, tribal agencies, and court improvement programs to work together to ensure parents, children, and youth receive high-quality legal representation.

To that end, in order to access this new revenue source, the UCS, the City of New York, and each county or tribal government's parental representation administrative structure so designated will submit claims to OCFS, per the prescribed method outlined in the *Title IV-E Legal Representation Administration and Training Claim Form* in Attachment B of this INF. Such entities must have an approved three-year enhanced quality legal representation services plan (including a plan for annual reports) as prescribed in Attachment C<sup>1</sup> of this INF in place by April 1, 2022. If plans are approved after April 1, 2022, the entities can get reimbursed once the plan is approved.

As part of this plan, each covered entity must agree to do the following:

- Provide for new training on child welfare proceedings, best practices and attendant legal requirements for attorneys representing parents and children in child welfare proceedings
- Provide for such training to occur within the first year that this funding is available and be offered on a recurring basis for the period of the MOU (per Attachment A)
- Implement at least one new quality enhancement measure as described in Attachment C or C-1, as applicable
- Submit an annual and final report attesting to actual enhanced quality legal representation services that were implemented, as detailed in the instructions provided in Attachment C or C-1 of this INF

### IV. Claiming

To receive title IV-E reimbursement for allowable expenses associated with administering legal representation training and services for children or parents of children in child welfare proceedings for SFY 2020-21, the services must have been paid for within the two-year claiming period. Claims must be submitted within 18 months of the administrative expenses **payment date** to be claimed within the **two-year claiming deadline**, per 45 CFR § 95.7 - Time Limit for Claiming Payment for Expenditures. Please refer to the Quarterly Expenditure Report (QER) Title IV-E Claim Cutoff Chart posted on the title IV-E

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<sup>1</sup> Attachment C, attached to this INF, includes the initial three-year quality legal representation services plan for parental representation. The New York State Unified Court System is also subject to a quality legal representation plan for children that shall be incorporated into any memorandum of understanding with OCFS.

website at <https://ocfs.ny.gov/programs/fostercare/titleiv-e/> under the Legal Representation tab.

Claiming Process:

The *Title IV-E Legal Representation Administration and Training Claim Form* (Attachment B) must be filled out accurately and completely as well as signed by the chief financial officer (electronic signature is acceptable), per the “Definitions and Instruction” tab. There is required source documentation that must be included with the claim, including but not limited to invoices, contracts, and system-generated financial reports that support the expenditures being submitted on the claim as well as the applicable required match portion paid from the entity’s non-federal appropriation in the first instance. All amounts claimed must be easily identified in the source documentation. Please note, additional documentation may be requested to substantiate the claim or support audit, as necessary.

For the expenditures being submitted that are related to the legal representation cases for a child and his/her parents, a list containing the child’s name with the parent’s name(s), as well as the child’s client identification number (CIN), per the OCFS-5603 *Parent-Child Detail Form*, must be included as an attachment to the *Title IV-E Legal Representation Administration and Training Claim Form*. The ACF requires the number of title IV-E children and their parents served for the quarter being claimed to support the claim. Eligible administrative costs will have the approved OCFS title IV-E saturation rate applied, and then 50% of the remaining total will be eligible for federal reimbursement.

The OCFS claim forms for administrative expenses, supporting documentation, and the OCFS-5603 *Parent-Child Detail Form* must be provided to the OCFS Division of Administration, Bureau of Financial Operations (BFO), Title IV-E Unit through its identified preferred mechanism. All claims should be submitted to the [titleivelegalrep@ocfs.ny.gov](mailto:titleivelegalrep@ocfs.ny.gov) mailbox. Claim documents must utilize the naming convention Entity-Month-Quarter-Year. The name cannot be duplicative. If this naming convention is not utilized, the software will reject the claim. For example, OCFS-January-1-3-2021.

For the expenditures submitted in the OCFS claim form that are related to short-term training of attorneys representing title IV-E foster care children (in-placement) and their parents as well as title IV-E foster care candidates (pre-placement) and their parents in child welfare proceedings, the supporting documentation required includes, but is not limited to attorneys’ names, trainer costs (i.e., contract, payroll, etc.) and other training-related costs. Similar to the administrative costs claimed, eligible attorneys’ training costs will have the approved OCFS title IV-E saturation rate applied, and then 75% of the total will be eligible for federal reimbursement.

Also, the OCFS claim forms for training costs and supporting documentation must be provided to the OCFS Division of Administration, BFO, Title IV-E Unit through its identified preferred mechanism. All claims should be submitted to the [titleivelegalrep@ocfs.ny.gov](mailto:titleivelegalrep@ocfs.ny.gov) mailbox. Claim documents must utilize the naming convention Entity-Month-Quarter-Year. The name cannot be duplicative. If this naming convention is not utilized the federal software will reject the claim. For example, OCFS-January-1-3/2021.

The documentation supporting these claims must meet enhanced monitoring as well as federal and state audit requirements. The public entities submitting claims may be subjected to having to provide additional source documentation, as defined by OCFS, to

satisfy these audit requirements. Source documentation related to the claims must be retained for 30 years after the child is discharged from foster care.

OCFS reserves the right to issue disallowances, restrict claiming, and withhold future reimbursement due to noncompliance with the terms of the MOU.

The first submission of the *Title IV-E Legal Representation Administration and Training Claim Form* (Attachment B), must include a copy of the approved *Memorandum of Understanding* (Attachment A) signed by the state title IV-E agency and the county executive or the county's chief financial officer.

## V. Contact Information

**Any fiscal questions regarding to title IV-E reimbursement for legal representation services for children and parents in child welfare proceedings should be directed to:**

Nicole Newcomb, Assistant Finance Director, BFO, Division of Administration,  
(518) 486-9497 [Nicole.Newcomb@ocfs.ny.gov](mailto:Nicole.Newcomb@ocfs.ny.gov)

**Programmatic questions concerning quality legal representation services for children and parents in child welfare proceedings should be directed to:**

Cassandra Kelleher Donnaruma, Senior Director, Office of Implementation,  
Community Affairs and Protective Practices, DCWCS, 518-390-0737,  
[Cassandra.Kelleher@ocfs.ny.gov](mailto:Cassandra.Kelleher@ocfs.ny.gov)

**/s/ Derek J. Holtzclaw**

**Issued By:**

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**/s/ Lisa Gharthey Ogundimu, Esq.**

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