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Department of Health and Human Services' Children's Bureau Issues New Policy Allowing Federal Entitlement Funding for Legal Representation of Children and Parents in Child Welfare Cases

Landmark policy reversal opens up the Title IV-E entitlement to reimburse states for cost of attorneys working to protect the due process rights of eligible children and parents.

Washington, DC— In a much-anticipated move, the Children's Bureau (CB) of the U.S. Department of Health and Human Services recently announced a change to the [Child Welfare Policy Manual](#) (CWPM), that will for the first time permit Title IV-E funds to be used to reimburse states for the administrative costs of legal representation for children (and parents) in child welfare cases. This decision reflects an evolving understanding of the due process rights at stake for children in abuse and neglect cases faced with being placed in state custody, aka foster care, and an emerging national consensus around the need for high quality representation for all parties in these cases. [Initial coverage](#) regarding this policy change highlighted the central role played by the Children's Advocacy Institute (CAI) in this reform.

Before this change, the nearly 40 states that provide legal representation to children in child welfare court cases were forced to bear the financial burden on their own without any federal support.

The goal of securing a right to counsel for all children in abuse and neglect cases has been a cornerstone of CAI's work for over a decade. CAI founder and Price Professor of Public Interest Law Robert Fellmeth said, "This is a game changer for children's civil rights. If accused criminals have a constitutionally recognized right to counsel paid for with federal dollars when necessary, there is no reason why children victimized by maltreatment ought not to be granted the same when faced with state custody. This gets us one step closer to that goal."

CAI has pursued its work on this topic through publication of several editions of the [National Report Card on a Child's Right to Counsel](#), as well as through Congressional briefings, federal and state legislative and administrative advocacy, and impact litigation. CAI has worked proudly alongside exceptional allies such as First Star, Inc., the National Association of Counsel for Children, and the American Bar Association Center on Children and the Law in pursuing this work.

Says CAI National Policy Director Amy Harfeld, “This is a critical milestone in the child’s right to counsel movement. CAI is more committed than ever to continuing this work until every child across the country has a well-trained attorney by their side to protect their legal interests and ensure their voices are heard. This policy victory paves the way towards the ultimate recognition of the constitutional right to counsel for all children in child welfare cases and federal legislation ensuring such representation.”

In explaining this change, the Children’s Bureau stated, “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.” Dr. Jerry Milner, Associate Commissioner of the Children’s Bureau, and Special Assistant David Kelly were key players behind this landmark policy change.

Section 8.1B of the Questions and Answers will now read:

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.*

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About the Children’s Advocacy Institute. The Children’s Advocacy Institute, of the University of San Diego School of Law, works to improve the health, safety, and well-being of children. In addition to its academic component, CAI engages in regulatory and legislative advocacy, impact litigation and public education in order to ensure that children’s interests are represented effectively whenever and wherever government makes policy and budget decisions that will impact them. For more information, visit www.caichildlaw.org.