



Technical Bulletin

Frequently Asked Questions: Independent Legal Representation

July 20, 2020

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1. **BACKGROUND**

In 2017, the Administration for Children and Families (ACF) Children's Bureau (CB) issued an Information Memorandum (IM) identifying high quality legal representation for parents, children and the child welfare agency as critical to a well-functioning child welfare system ([ACYF-CB-IM-17-02](#)). The rationale includes research showing that early appointment of counsel in child welfare proceedings can improve case planning, expedite permanency and lead to cost savings to state/tribal government.¹

CB issued revised and new policies that allow title IV-E agencies to claim Federal financial participation (FFP) for administrative costs of independent legal representation provided by an

¹ ACYF-CB-IM-17-02 highlights associations of legal representation with enhanced parent engagement and identifies best practices and exemplary models of legal representation, including multi-disciplinary representation, which pairs attorneys with independent social workers or peer parent partners, as especially promising. An important [study](#) conducted in New York City in 2019 provides especially compelling evidence of the effectiveness of the multi-disciplinary approach. A companion, [qualitative study](#) released in 2020 lends further support to the model.

attorney under section 474(a)(3) of the Social Security Act (the Act) and federal regulations at 45 CFR 1356.60(c). In [section 8.1B of the Child Welfare Policy Manual \(CWPM\)](#), CB revised and issued Q/A #30 on January 7, 2019, issued #31 on July 29, 2019 and issued #32 on April 20, 2020.

In addition, CB has determined that states and tribal grantees may use kinship navigator funds provided under title IV-B, subpart 2 of the Act to provide brief legal services to “assist kinship caregivers in learning about, finding and using programs and services to meet the needs of the children they are raising and their own needs,” which may include “support[ing] any other activities designed to assist kinship caregivers in obtaining benefits and services to improve their caregiving.” See section 427(a)(1) of the Act.

CB issues this Technical Bulletin (TB) to respond to title IV-E agency and other stakeholder frequently asked questions (FAQs) about the aforementioned policies. The FAQs in this TB do not establish new policy or requirements or supersede existing laws or official guidance.

Question: What are the revised and new CWPM questions?

Answer: CWPM 8.1B #30 allows title IV-E agencies to claim FFP for the administrative costs of “preparation for and participation in judicial determinations” in all stages of foster care legal proceedings, by: a title IV-E agency attorney, an attorney providing independent representation to a child who is a candidate for title IV-E foster care or is in title IV-E foster care and an attorney providing independent representation to such a child’s parent.

CWPM 8.1B #31 further clarifies that a title IV-E agency that has an agreement with a tribe or any other public agency under section 472(a)(2)(B)(ii) of the Act may claim title IV-E administrative costs for legal representation provided by tribal or public agency attorneys under the agreement in all stages of foster care related legal proceedings. The title IV-E agency may also claim administrative costs for independent legal representation provided by an attorney for a candidate for title IV-E foster care or a title IV-E eligible child in foster care who is served under the agreement, and the child’s parents, to prepare for and participate in all stages of foster care related legal proceedings.

CWPM 8.1B #32 clarifies that administrative costs for paralegals, investigators, peer partners or social workers may be claimed as title IV-E foster care administrative costs to the extent they are necessary to support an attorney providing independent legal representation.

2. TITLE IV-E ADMINISTRATIVE COSTS

A title IV-E agency may claim administrative costs for preparation for and participation in judicial determinations by a title IV-E agency attorney or an attorney providing independent representation to a child who is a candidate for title IV-E foster care or is in title IV-E foster care, and his/her parent. Such activities and expenses must be necessary to carry out the requirements in the agency’s title IV-E plan. See 45 CFR 1356.60(c)(2)(ii).

Question: What are some examples of *foster care legal proceedings*?

Answer: Examples include:

- hearings related to judicial determinations that it is contrary to the welfare of a child to remain in the home,
- hearings related to a child's removal from the home,
- hearings related to judicial determinations that the agency provided reasonable efforts to prevent removal and finalize the permanency plan,
- permanency hearings,
- hearings related to progress on case plans, and
- appeal proceedings that relate to judicial determinations required under title IV-E.

Question: What are some examples of *allowable administrative activities* for agency or independent attorneys to prepare for and participate in judicial determinations for all stages of foster care legal proceedings?

Answer: Examples include:

- independent investigation of the facts of the case, including interacting with law enforcement,
- meeting with clients or making home or school visits,
- attending case planning meetings,
- providing legal interpretations,
- preparing briefs, memos, and pleadings,
- obtaining transcripts,
- interviewing and preparing their client and witnesses for hearings,
- hearing presentation,
- maintaining files,
- supervising attorneys, paralegals, investigators, peer partners or social workers that support an attorney in providing independent legal representation to prepare for and participate in all stages of foster care legal proceedings,
- filing child abuse and neglect petitions for candidates for foster care,
- court fees to file a petition for a judicial determination required under title IV-E, and
- appellate work in reference to foster care legal proceedings.

Question: If the title IV-E agency determined that a child is a candidate for title IV-E foster care (as defined under section 472(i) of the Act), may the agency claim allowable title IV-E administrative costs of “pre-removal” independent legal representation by an attorney for the child and/or his or her parent?

Answer: Yes, in preparation for legal proceedings in relation to the child’s removal, beginning with the first month in which the candidacy determination was made. Additional information on candidacy determinations is available in [CWPM 8.1D](#).

Question: May the title IV-E agency claim independent legal representation costs by a Guardian Ad Litem (GAL) for a child who is a candidate for title IV-E foster care or is in title IV-E foster care, and his/her parent in foster care legal proceedings?

Answer: A title IV-E agency may claim title IV-E administrative costs for a GAL if he or she is an attorney providing independent legal representation to a title IV-E eligible child in all stages of foster care proceedings.

Question: Can title IV-E agencies claim title IV-E reimbursement for state/tribe-funded public defenders who are separately appointed in both the delinquency and dependency cases to represent dually involved children?

Answer: The title IV-E agency may claim only for the legal representation costs associated with the foster care legal proceedings that are necessary for the proper and efficient administration of the title IV-E plan. The agency may not claim costs related to preparation and participation in delinquency cases. To the extent that both juvenile justice and foster care proceedings are unified into one court proceeding, the title IV-E agency may only claim the time an attorney spends preparing for and participating in foster care proceedings. The time an independent attorney spends preparing for and participating in delinquency proceedings is not an allowable title IV-E cost.

3. CLAIMING TITLE IV-E FEDERAL FINANCIAL PARTICIPATION

To claim title IV-E administrative costs for independent legal representation, the title IV-E agency must clearly identify in an approved Public Assistance Cost Allocation Plan (PACAP) or Tribal Cost Allocation Methodology (CAM) the types of administrative activities the agency intends to claim and the methodology it will use to identify allowable costs.

Question: What steps must a title IV-E agency take prior to claiming FFP for independent legal representation costs?

Answer: A state title IV-E agency must update its PACAP to claim these costs, and a tribal title IV-E agency must update its CAM to claim these costs. See 45 CFR Parts 75 and 95 and ACYF-CB-PI-10-13. If a child is not specifically identified as a youth in title IV-E foster care or a candidate for title IV-E foster care, there must be an allocation to assure that each participating program is charged its proportionate share of costs. For candidates, the allocation must be based on a determination both of candidacy for foster care and of potential IV-E eligibility. Using a ratio of IV-E to non-IV-E foster care cases (i.e., title IV-E participation rate) is one acceptable means of allocation. Other means of determining candidacy and of determining potential IV-E eligibility may also be acceptable. The title IV-E agency must update its PACAP/CAM to claim these costs. For additional information, see [CWPM 8.1 B](#) (Allowable costs – Foster care maintenance payments program), 8.1C (calculating claims) and 8.1D (Candidates for title IV-E foster care).

Question: What must a state title IV-E agency's PACAP include for purposes of claiming the costs of independent legal representation?

Answer: The state title IV-E agency must clearly identify those administrative activities and the methodology that will be used for claiming title IV-E administrative costs for independent legal representation through an approved PACAP. The PACAP must:

- describe the procedures used to identify, measure, and allocate all costs to each of the programs operated by the agency (see 45 CFR 95.507(a)(1)),
- provide a statement stipulating that wherever costs are claimed for services provided by a governmental agency outside the title IV-E agency, costs be supported by a written agreement that includes, at a minimum (i) the specific service(s) being purchased, (ii) the basis upon which the billing will be made by the provider agency (e.g. time reports, number of homes inspected, etc.) and (iii) a stipulation that the billing will be based on the actual cost incurred (see 45 CFR 95.507(a)(6)),
- identify the services, eligible clients, types of cost and geographic or other scope of operations and how the costs will be accumulated into one or more identified cost pools for allocation purposes, and
- describe how the state title IV-E agency will maintain sufficient records “to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.” See also federal regulations on record retention (see 45 CFR 75.361) and record access (see 45 CFR 75.364).

Question: What must a tribal title IV-E agency’s CAM include for purposes of claiming the costs of independent legal representation?

Answer: The tribal title IV-E agency must clearly identify those administrative activities and the methodology that will be used for claiming title IV-E administrative costs for independent legal representation through an approved CAM. The CAM must:

- include specific procedures to appropriately identify, measure and allocate documented administrative and training costs,
- use general guidance provided in 45 CFR Part 95, Subpart E to develop a CAM limited to the federal and non-federal programs administered by those staff or units having responsibility for title IV-E programs,
- contain sufficient information to permit ACF and auditors to determine that costs claimed for title IV-E FFP were appropriately identified, measured and allocated, and
- assure that the information contained in the CAM was prepared in conformance with 45 CFR Part 75; that the costs are accorded consistent treatment through the application of generally accepted accounting principles appropriate to the circumstances, that an adequate accounting and statistical system exists to support claims and the information provided in support of the CAM is accurate.

Question: How does a title IV-E agency report to ACF the administrative costs for independent legal representation?

Answer: The title IV-E agency must report such costs in accordance with instructions for the Title IV-E Programs Quarterly Financial Report (Form CB-496). The instructions specify that for periods beginning January 1, 2020 and later, the title IV-E agency must report title IV-E administrative costs for independent legal representation of children or parents as described below. See [ACYF-CB-PI-20-09](#). The average monthly number of children served through these activities must also be reported. The specific Form CB-496 Part 1 reporting lines used for independent legal representation are:

- Line 8. In-Placement Administrative Costs – Legal Representation – Child or Parent
- Line 10b. Title IV-E Foster Care Candidate Administrative Costs – Legal Representation – Child or Parent
- Line 49b. Number of Children: In-Placement - Title IV-E Funded Child or Parent Legal Representation Administrative Costs
- Line 51b. Number of Children: Title IV-E Foster Care Candidate – Title IV-E Funded Child or Parent Legal Representation Administrative Costs

Question: Must the title IV-E agency submit a title IV-E plan amendment to claim administrative costs for independent legal representation?

Answer: No, a title IV-E plan amendment is not necessary for the title IV-E agency to claim administrative costs for independent legal representation by an attorney for an eligible child and/or his/her parent.

4. NON-FEDERAL SHARE

The title IV-E program provides cost-sharing requirements for the non-federal share of program expenditures (see 45 CFR 1356.60 and 1356.68), which apply to the non-federal share of the cost of providing independent legal representation.

Question: What funds can state title IV-E agencies use to meet the requirements for the non-federal share of program expenditures?

Answer: The required state share of costs claimed for the title IV-E foster care program must be sourced from state or local appropriated funds or donated funds, but may not be sourced from federal funds provided through another program. State title IV-E agencies may not use third party in-kind expenditures (or contributions) as a source of the state share of funds for the foster care programs under title IV-E of the Act. See CWPM 8.1F, Q#2. For example, attorney volunteer hours may not be used as a source of state match.²

² Federal regulations at 45 CFR 1355.30(i) provide a specific exception for these programs to the applicability of federal regulations at 45 CFR 75.306 which permit certain other sources for a required state match.

Question: What funds can tribal title IV-E agencies (i.e., tribes directly operating the title IV-E program under section 479B of the Act) use to meet the requirements for the non-federal share of program expenditures for independent legal representation?

Answer: The required tribal share of costs claimed for independent legal representation may be sourced either from tribal appropriated funds or from third-party in-kind sources. A tribal title IV-E agency may claim in-kind expenditures for independent legal representation from any allowable third-party sources of up to 50 percent of the total administrative funds expended during a fiscal quarter pursuant to section 474(a)(3)(E) of the Act and 45 CFR 1356.68(c).

Question: May title IV-E agencies use title IV-B funds as match for title IV-E expenditures?

Answer: No. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by another Federal grant. See 45 CFR 75.403(f), 45 CFR 75.306(b)(5) and 1355.30(i). The agency may not claim title IV-E and other federal program funding for the same costs.

5. TITLE IV-E AGREEMENTS AND CONTRACTS

Question: May a title IV-E agency contract out its legal representation functions to another agency that is not under a title IV-E agreement with the IV-E agency?

Answer: Yes. Title IV-E agencies often contract out title IV-E administrative functions such as legal representation to other private or public agencies through a contract or other type of agreement. This is distinct from the IV-E agency entering into an agreement under section 472(a)(2) of the Act (referred to herein as a ‘title IV-E agreement’) with another public agency. A section 472(a)(2) title IV-E agreement between a title IV-E agency and a public agency is for the purpose of permitting another public agency to have responsibility for the placement and care of title IV-E eligible children. See [CWPM 8.1G](#) for additional information on title IV-E agreements.

Through contracting, the title IV-E agency pays another private or public agency to perform its administrative functions, and supervises the contracted administrative activities performed by the contractor or other agency. The process of contracting out does not include the transfer of responsibility of placement and care of a specific child/children to another agency. See CWPM section 8.1E for additional information on contracting with a title IV-E agency.

Question: May an entity with a title IV-E agreement or a contract with a title IV-E agency, submit claims directly to ACF for title IV-E administrative costs of independent legal representation?

Answer: No. Regardless of whether a title IV-E agency enters into a title IV-E agreement or a contract with another agency, the title IV-E agency is the only entity that may submit claims to the federal government for title IV-E FFP.

Question: What should a title IV-E agency, that has a title IV-E agreement with another public agency or tribe, or a contract with another private or public agency, include in its PACAP/CAM with regard to independent legal representation?

Answer: A title IV-E agency's PACAP/CAM must³:

- identify the nature of the title IV-E agreement for independent legal representation of an eligible child and his/her parent;
- describe how the title IV-E agency will monitor to assure the arrangements will be fulfilled; and
- include a statement⁴ that costs claimed for such services will be supported by a written agreement that includes at a minimum: the specific service(s) being purchased, the basis upon which the billing will be made by the provider agency (e.g. time reports, etc.) a stipulation that the billing will be based on the actual cost incurred.

6. TITLE IV-E TRAINING COSTS

Title IV-E allows title IV-E agencies to claim allowable short-term training provided to certain individuals, including current or prospective foster and adoptive parents and relative guardians and professional partners of the agency, including attorneys representing children or parents and GALs, in ways that increase the ability of such individuals to assist and support foster and adopted children, and children living with relative guardians. See section 474(a)(3)(B) of the Act).

Question: Can a title IV-E agency claim allowable costs for short-term training to an attorney who represents children and youth receiving title IV-E foster care maintenance payments (FCMP) or are otherwise eligible to receive FCMP?

Answer: Yes. A title IV-E agency may claim allowable costs at 75% FFP to provide short-term training to an attorney who represents children and youth who are receiving title IV-E FCMP or are otherwise eligible to receive FCMP and title IV-E foster care candidates and their parent(s), consistent with section 474(a)(3)(B) of the Act. See CWPM 8.1H #20. These costs must also be addressed in the agency's title IV-B/E training plan and in its approved PACAP/CAM.

Question: What are allowable short-term training costs for attorneys who provide independent legal representation?

³ See 45 CFR Part 95, subpart E. Contact your assigned ACF grants management specialist for additional information.

⁴ This statement would not be required if the costs involved are specifically addressed in a State-wide cost allocation plan, local-wide cost allocation plan, or an umbrella/department cost allocation plan." 45 CFR 95.507(b)(6).

Answer: Training topics must be closely related to one of the examples cited in 45 CFR 1356.60(c)(1) and (2) as allowable administrative activities under the title IV-E program. For example, training topics could include:

- title IV-E policies and procedures;
- cultural competency related to children and families;
- child abuse and neglect issues, such as the impact of child abuse and neglect on a child; and
- general overviews of the issues involved in child abuse and neglect investigations.

See CWPM 8.1H #8 for additional examples of allowable training topics.

7. EFFECTIVE DATE

Question: When are the revised and new CWPM Q/As effective?

Answer: A new or revised CWPM Q/A is generally effective upon issuance, and therefore, the effective date for the CWPM 8.1B #30, #31 and #32 is January 7, 2019, since #31 and #32 are clarifications of #30.

Question: When may the title IV-E agency begin claiming costs for independent legal representation?

Answer: The title IV-E agency may claim costs that are incurred on or after the policy's effective date on or after the date that the PACAP/CAM amendment is submitted (subject to potential claiming adjustments) or is approved. See 45 CFR 95.515 and 95.517.

Appendix: CWPM 8.1B, questions #30, #31 and #32

INQUIRIES TO: [Children's Bureau Regional Program Managers](#) and Administration for Children and Families Office of Grants Management

Disclaimer: Technical Bulletins provide information or recommendations to States, Tribes, grantees and others on a variety of child welfare issues. Technical Bulletins do not establish requirements or supersede existing laws or official guidance.

/s/

Jerry Milner
Associate Commissioner
Children's Bureau

Appendix: Child Welfare Policy Manual (CWPM) 8.1B, questions #30, #31 and #32

CWPM 8.1B Question #30. 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.

CWPM 8.1B Question #31. Are title IV-E administrative costs for the legal representation provided by agency attorneys and for independent legal representation of children and parents in all stages of foster care related legal proceedings available to tribes and public agencies that have an agreement under section 472(a)(2)(B)(ii) of the Act?

Answer: Yes. A title IV-E agency that has an agreement with a tribe or any other public agency under section 472(a)(2)(B)(ii) of the Act may claim title IV-E administrative costs for legal representation provided by tribal or public agency attorneys under the agreement in all stages of foster care related legal proceedings. The title IV-E agency may also claim administrative costs for independent legal representation provided by an attorney for a candidate for title IV-E foster care or a title IV-E eligible child in foster care who is served under the agreement, and the child's parents, to prepare for and participate in all stages of foster care related legal proceedings.

CWPM 8.1B Question #32. Does the policy at CWPM 8.1B #30 allow a title IV-E agency to claim title IV-E administrative costs of paralegals, investigators, peer partners or social workers that support an attorney providing independent legal representation to a child who is a candidate for title IV-E foster care or is in title IV-E foster care, and his/her parent, to prepare for and participate in all stages of foster care legal proceedings, and for office support staff and overhead expenses?

Answer: Yes, the policy permits a title IV-E agency to claim such title IV-E administrative costs to the extent that they are necessary to support an attorney in providing independent legal representation to prepare for and participate in all stages of foster care legal proceedings for candidates for title IV-E foster care, youth in foster care and his/her parents. The costs must be consistent with federal cost principles per 45 CFR Part 75 Subpart E. The title IV-E agency must allocate such costs so as to assure that the title IV-E program is charged its proportionate share of costs (See CWPM sections 8.1B and 8.1C).