



NEW JERSEY STATE BAR ASSOCIATION

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May 1, 2023

Hon. Glenn A. Grant, J.A.D.
Administrative Director of the Courts
Hughes Justice Complex
25 Market Street
P.O. Box 970
Trenton, NJ 08611

Re: Proposal re: Child Support Guidelines

Dear Judge Grant:

Last year, the Department of Health & Human Services (HHS) issued new guidance about the collection of child support payments from parents whose children are in the foster care system. The guidance, issued in connection with section 471(a)(17) of the federal Social Security Act, recommends that the payment of child support not be required for children in foster care except in very rare instances where there will not be any adverse effects on the child, or the payment requirements will not impede successful achievement of the child's permanency plan. The New Jersey State Bar Association (NJSBA) urges the Judiciary to review the attached guidance (question #5) and take appropriate steps to adjust New Jersey's child support guidelines to cease the assignment of child support to the state when children are taken into foster care.

As noted in the attached report from the Center on Budget and Policy Priorities, charging parents for foster care is not cost effective, harms families who are already experiencing economic difficulties, disproportionately impacts Black and American Indian families, and undermines the goal of family reunification. The NJSBA believes that implementation of the recent HHS guidance will be crucial to helping to create more fair and equitable child support and child welfare programs and prioritizing family reunification. It will allow families with children in foster care to focus on the necessary steps to be reunited with their children instead of being crippled further with additional financial hardship imposed by child support obligations.

The NJSBA also recommends that the Judiciary review how the process of modifying child support payments under these circumstances can be streamlined within the context of child welfare proceedings. Currently parents involved in child welfare proceedings seeking to modify their child support orders because their children have been removed from the home are required to file an FD application and wait for a hearing on their child support modification application to be scheduled. There is no formal procedure in place to ensure that the Family Court judge hearing the child welfare matter will be assigned the child support matter, or that the child support issue will be heard in a timely fashion relative to the child welfare case. Streamlining the ability of a parent whose children are in the foster care system to request a child support modification would help to alleviate some of the additional stress, pressure and uncertainty faced by these parents.

Again, the NJSBA asks that the Judiciary review its child support procedures and update them, where possible, to reflect the recent HHS guidance, and streamline the ability of parents with children in foster care to modify their child support obligations. Thank you for your consideration.

Respectfully,



Jeralyn L. Lawrence
President

cc: Timothy McGoughran, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director

Child Welfare Policy Manual

April 30, 2023

Questions & Answers

8.4C TITLE IV-E, General Title IV-E Requirements, Child support

1. Question: As part of the Aid to Families with Dependent Children (AFDC) requirements for eligibility, the parents must sign a child support assignment form. Does this provision apply to title IV-E?

Answer: When Public Law 96-272 established title IV-E in 1980, it made no provision for the assignment of support rights as a condition of eligibility. Early developmental policy stated that under title IV-E the assignment of support rights was optional; however, section 471(a)(17) of the Social Security Act (as amended by Public Law 98-378, (effective October 1, 1984)) requires title IV-E agencies to take steps to secure an assignment of support rights on behalf of each child receiving title IV-E foster care maintenance payments. However, a child is not ineligible under title IV-E because the parent fails to comply with certain AFDC requirements in regard to child support assignment.

According to the regulations, "a child may not be denied AFDC either initially or subsequently because a parent or other caretaker relative fails to cooperate with the child support agency..." (45 CFR 233.90 (b)(4)(i)).

- **Source/Date:** ACYF-CB-PIQ-85-07 (6/25/85) (revised 6/6/13)
- **Legal and Related References:** 45 CFR 233.90

2. Question: A child for whom title IV-E adoption assistance payments are made re-enters foster care and becomes eligible for title IV-E foster care maintenance payments. Must the title IV-E agency refer the child to the title IV-D agency to establish and collect child support?

(Deleted 06/08/2022)

3. Question: If the State title IV-E agency refers to the title IV-D agency a child in foster care on whose behalf a title IV-E adoption assistance subsidy is being paid, can the court or the administrative body limit the child support award to the amount of the adoption assistance subsidy?

(Deleted 04/13/2020)

4. Question: Must adoption assistance payments be included in the definition of "all earnings and income" as described in the child support regulations at 45 CFR 302.56(c) for the purpose of determining the child support award?

(Deleted 04/13/2020)

5. Question: Section 471(a)(17) of the Social Security Act (the Act) requires title IV-E agencies to “where appropriate” take “all steps” to secure an assignment of the rights to child support for a child receiving title IV-E foster care maintenance payments (FCMPs). How should a title IV-E agency determine when it is “appropriate” to secure an assignment of the rights to child support?

Answer: We are issuing revised policy for title IV-E agencies to define more narrowly “where appropriate” so that the default position in these determinations can be for the title IV-E agency not to secure an assignment of the rights to child support for children receiving title IV-E FCMPs.

Securing an assignment of the rights to child support is generally deemed not to be cost effective as analyses have shown that very low levels of collections are obtained, particularly in comparison to the costs for administering child support for children in title IV-E foster care (see references). In addition, children receiving title IV-E FCMPs have been removed from households where they would have qualified for Aid to Families for Dependent Children (AFDC) under a state’s July 16, 1996 standard of need. This means that the parent(s) of these children are likely to be living in poverty. It is almost never the case that securing an assignment of the rights to child support is in the best interests of a child during the time the child is in title IV-E foster care. Parent(s) are typically required to engage in a variety of efforts and services to be successfully reunified with their child. This may include regular family time, therapy, parenting courses, and/or treatment for a substance use disorder. It’s likely that reducing the income of the child’s parent(s) could impede their ability to engage in reunification efforts, potentially extending the time the child spends in foster care. Given this, previous policy directing title IV-E agencies to determine “where appropriate” on a case-by-case basis is withdrawn. Consequently, while each title IV-E agency may determine what constitutes “where appropriate”, agencies should consider across-the-board policies. These policies may reflect that an assignment of the rights to child support for children in title IV-E foster care is not required except in very rare instances where there will be positive or no adverse effects on the child, or the assignment will not impede successful achievement of the child’s permanency plan. For example, title IV-E agencies might consider policies reflecting that securing an assignment of the rights to child support isn’t appropriate unless the parent(s) income is above a specified income level.

Where a child support referral has been made, we encourage title IV-E agencies to use the 6-month periodic reviews to re-assess whether the assignment of rights to support should continue, given this new federal policy. As always, we encourage title IV-E agencies to consult with their title IV-D counterparts when considering these issues.

References: Orange County Department of Child Support Services. (Second Edition, July 2020). Child Support and Foster Care Special Study. <https://www.css.ocgov.com/sites/css/files/import/data/files/116568.pdf>.

Skophammer, Trish. (2017). Child Support Collections to Offset Out of Home Placement Costs: A Study of Cost Effectiveness. Dissertation for the Graduate School of Hamline University. https://digitalcommons.hamline.edu/hsb_all/16.

Washington Department of Social and Health Services, Economic Services Administration, Division of Child Support. (2019). Washington’s Cost Effectiveness for Foster Care Child Support Cases. <https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/Cost%20Effectiveness%20FC%20collections%20FINAL.pdf>

- **Source/Date:** 06/08/2022
- **Legal and Related References:** Social Security Act - section 471(a)(17)

The above information can be found at:

https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp?citID=170

October 13, 2022

States Should Use New Guidance to Stop Charging Parents for Foster Care, Prioritize Family Reunification

by Diana Azevedo-McCaffrey

Recent guidance from the Health and Human Services (HHS) Administration for Children & Families allows states to end the harmful practice of charging parents for costs associated with their child being in foster care. Implementing this guidance will be crucial in helping create more equitable child support and child welfare programs that put the needs of children first.¹ Most children placed in foster care are there due at least in part to their parents' economic hardships, and charging for such care as most states do imposes extra hardship and delays family reunification. This approach also costs more to administer than it collects. States and localities should act expeditiously to change the policies needed to fully implement the new guidance and prioritize reunification, the central goal of the foster care system.

Most states' child welfare agencies refer all children receiving Title IV-E federal foster care services to the state child support enforcement agency, which then can issue child support orders that seek to collect child support from the children's parents to offset the cost of their foster care. Children qualify for Title IV-E foster care services when they are removed from households with very low incomes. Although some states require all parents to pay child support while their child is in foster care, federal law only requires that states issue orders to Title IV-E families. Because of the federal requirement and the fact that most parents whose children are placed in foster care are struggling financially, fees fall heavily on families with very low incomes.

In recognition of the problems raised by the existing approach, the recently issued guidance makes it easier for states to stop referring children in foster care to the child support agency, and in turn, avoid issuing support orders against parents for the cost of children's care. Under the guidance, child support orders would be put in place only in very rare cases that have been thoroughly reviewed to

¹ Children's Bureau, Office of the Administration for Children & Families, U.S. Department of Health and Human Services, Child Welfare Policy Manual, "8.4C Title IV-E, General Title IV-E Requirements, Child Support," June 8, 2022,

https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=170&utm_medium=email&utm_source=cwpmqaCB060322; Aysha E. Schomburg and Tangler Gray, Joint Letter Regarding Assignment of Rights of Child Support for Children in Foster Care, Administration for Children & Families, U.S. Department of Health and Human Services, July 29, 2022,

https://www.acf.hhs.gov/sites/default/files/documents/cb/letter_regarding_assignment_rights_child_support_for_children_foster_care.pdf.

ensure that imposing a child support obligation on the parent is in the child's best interests and would not financially impede a family's reunification process.

Furthermore, the guidance recommends that if a child is not referred to the child support agency, then pre-existing child support orders that require non-custodial parents to pay child support to the custodial parent remain in place and that payments go to the custodial parent, supporting the custodial parent's ability to pay for housing and meet the conditions for reunification. That is different from the existing approach, in which referrals to the child support agency are the default and such payments can be diverted to the state. In addition, the existing approach often requires both the non-custodial *and* custodial parent to pay monthly amounts to the state (which can be garnished directly from their paychecks), setting their finances back and potentially delaying reunification.

Research shows that requiring families to reimburse the state and federal governments for the costs of foster care services is not in anyone's best interests. First and foremost, it harms children and families. Fees are charged to families with very low incomes, compounding their economic hardship and often delaying families' reunification. And research demonstrating that children have better cognitive, behavioral, and health outcomes when raised in stable settings suggests that achieving timely family reunification can promote better lifelong outcomes for most children in foster care. Further, even after reunification, debilitating debt from unpaid child support can accumulate and follow families, making it harder for them to climb out of poverty and to provide for their children, risking further encounters with the child welfare system.

The current approach also particularly harms people of color. The fees' targeting of parents with low incomes disproportionately affects parents of color, who are more likely to have low incomes due to long-term, systemic racism in areas like employment and education. In addition, the child welfare system also has existing racial disparities that are compounded by the fees parents are assessed. Black and American Indian families are overrepresented in child welfare investigations and foster care placements and are more likely to experience the termination of parental rights, suggesting that racial bias, including racist stereotypes about parental unfitness, should be studied as a possible contributing factor.

Lastly, these child support orders cost the government more to administer than it collects in reimbursement, and the delays in reunification are also expensive. Studies show that more dollars are spent pursuing collections than are collected — as little as 24 cents recouped for every dollar spent.

The recent guidance provides a useful roadmap to states on how to end these harmful child support policies and ensure that families are not burdened with child support debt following reunification. The steps to implement the guidance will vary by state, but most will need to develop clear guidelines establishing non-referral to child support enforcement agencies as the standard practice; reprogram computer systems to stop automatic referral; train personnel on the new guidance; establish quality control mechanisms to review cases pending referral; and adopt practices that improve coordination between child welfare and child support programs.

Most Children Enter Foster Care Due to Neglect, With Economic Hardship a Prevalent Risk Factor

Research finds an estimated 85 percent of families investigated by Child Protection Services have incomes below 200 percent of the federal poverty line,^a suggesting that **families with low incomes are significantly more likely to encounter child welfare services at some point during their lives** than other families.

Most children enter foster care due to neglect rather than abuse, with neglect being generally defined as failure to meet a child's basic needs. Most reports of neglect allegations reflect the many ways poverty can manifest in a family's life. For example, economic hardship may cause parents to be unable to provide their children with basic necessities like food, shelter, medical care, and supervision, all factors that can contribute to the child welfare agency making a finding that the child is being neglected. Data consistently show that inadequate housing is a factor leading to a child's removal in at least 10 percent of foster care cases.^b

Poverty and neglect are not one and the same: experiencing poverty does not mean a child is unsafe in their own home or that a parent is incapable of caring for their child. However, broad definitions of neglect in state and federal law allow for children to be removed from their families under conditions that do not threaten a child's immediate safety or outweigh the traumatic harm of removal. Child welfare experts have questioned whether the system distinguishes neglect from conditions rooted in poverty, and whether labeling parents as perpetrators of neglect punishes economic hardship when instead these parents could be connected to income and other assistance to help them meet basic needs.^c Research suggests that anti-poverty measures, such as the Earned Income Tax Credit (EITC), can reduce reports of child neglect; in Washington State a 10 percentage point increase in state-level EITC benefits was associated with 241 fewer reports of neglect per 100,000 children.^d Another study found that each additional \$1,000 states spent on benefit programs (like Temporary Assistance for Needy Families, or TANF) per person living in poverty was linked to a 4 percent decrease in reporting to Child Protection Services and a 2 percent decrease in foster care placements.^e And states imposing certain TANF restrictions, including taking away benefits for not meeting work requirements and limiting benefits to less than 60 months, saw a 32 percent increase in foster care placements.^f

Studies also show that parents involved in the child welfare system often face significant barriers to economic stability and family well-being, such as mental illness and substance use issues that, without access to proper treatment, may worsen economic hardship.^g Without enough resources, managing a mental health disorder or a substance use issue is even more challenging: forgoing wages for an afternoon medical appointment, let alone for a month-long stay at a treatment facility, may be not be feasible.

^a Melissa Dolan et al., "NSCAW II Baseline Report: Introduction to NSCAW II Final Report OPRE Report 2011-27a," Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services, August 2011, https://www.acf.hhs.gov/sites/default/files/documents/opre/nscaw2_intro.pdf.

^b U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, the AFCARS Report, Preliminary FY 2020 and 2019 estimates, <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport28.pdf>, <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport27.pdf>.

^c Dorothy E. Roberts, "Child protection as surveillance of African American families," *Journal of Social Welfare and Family Law*, Vol. 36, No. 4, November 14, 2014, <https://doi.org/10.1080/09649069.2014.967991>; Diane L. Redleaf, "Biden's Child welfare Focus Should Be Removing Poverty from Neglect," *The Imprint*, December 21, 2020, <https://imprintnews.org/child-welfare-2/biden-child-welfare-focus-removing-poverty-neglect/50041>; Leroy H. Pelton, "Separating coercion from provision in child welfare," *Child Abuse & Neglect: The International Journal*, Vol. 51, <https://doi.org/10.1016/j.chiabu.2015.08.007>.

^d Nicole L. Kovski et al., "Association of State-Level Earned Income Tax Credits With Rates of Reported Child Maltreatment, 2004-2017," *Child Maltreatment*, Vol. 27, No. 3, January 19, 2021, <https://doi.org/10.1177/1077559520987302>.

^e Henry T. Puls et al., "State Spending on Public Benefit Programs and Child Maltreatment," *Pediatrics*, Vol. 148, No. 5, November 1, 2021, <https://doi.org/10.1542/peds.2021-050685>.

^f Donna K. Ginther and Michelle Johnson-Motoyama, "Do State TANF Policies Affect Child Abuse and Neglect?" *University of Kansas*, October 27, 2017, https://www.econ.iastate.edu/files/events/files/gintherjohnsonmotoyama_appam.pdf.

^g Amy Dworsky, Mark E. Courtney, and Andrew Zinn, "Child, parent, and family predictors of child welfare services involvement among TANF applicant families," *Children and Youth Services Review*, Vol. 29, No. 6, June 2007, <https://doi.org/10.1016/j.childyouth.2006.12.007>; Wendy A. Walsh and Marybeth J. Mattingly, "Understanding Child Abuse in Rural and Urban America: Risk Factors and Maltreatment Substantiation," Carsey Institute, University of New Hampshire, 2012, <https://scholars.unh.edu/cgi/viewcontent.cgi?httpsredir=1&article=1169&context=carsey>.

Guidance Encourages States to Change Referral From Default to Exception

The Title IV-E Foster Care Program provides funds to state and tribal child welfare agencies to assist with the costs of foster care services for eligible children; administrative expenses to manage the program; and training for agency staff and foster parents.² Under federal law, states refer children receiving IV-E foster care services to the child support enforcement agency, and then are required to split any collected child support payments with the federal government according to a state's Federal Medical Assistance Percentage Rate (FMAP),³ to recoup foster care costs.⁴ (This generally means that between 50 and 75 percent of the collected funds go to the federal government.)

Federal law affords state foster care agencies flexibility in determining when IV-E cases should not be referred to child support enforcement if the agency decides that referral would not be in the "best interests of the child."⁵⁶ In practice most states do not take advantage of this legal flexibility and instead refer most IV-E cases regardless of what's best for the family. And what's best, research shows, is usually keeping families together.⁷

States are permitted, but not required, to collect child support for children in foster care who are not IV-E eligible; that is, children whose families' incomes are too high to meet the IV-E eligibility standards.

Federal guidance on the law's child support referral rules for IV-E foster children has, until now, been broad. Decisions about when to refer cases for child support enforcement therefore vary widely by state, county, and even by caseworker, sometimes resulting in different application within a single office.⁸ Most states do not specifically define "best interests" or how caseworkers should

² Children's Bureau, Office of the Administration for Children & Families, U.S. Department of Health and Human Services, "Title IV-E Foster Care Eligibility Reviews Fact Sheet," <https://www.acf.hhs.gov/cb/fact-sheet/title-iv-e-foster-care-eligibility-reviews-fact-sheet>.

³ *Federal Register*, "Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2021 Through September 30, 2022," National Archives, Table 1, <https://www.federalregister.gov/documents/2020/11/30/2020-26387/federal-financial-participation-in-state-assistance-expenditures-federal-matching-shares-for>. Congressional Research Service, "Medicaid's Federal Medical Assistance Percentage (FMAP)," updated July 29, 2020, <https://crsreports.congress.gov/product/pdf/R/R43847>.

⁴ Office of Child Support Enforcement, Administration for Children and Families, U.S. Department of Health and Human Services, "Recoupment of the Federal Share of Collections Made on Behalf of Children in Foster Care," current as of November 26, 2021, <https://www.acf.hhs.gov/css/policy-guidance/recoupment-federal-share-collections-made-behalf-children-foster-care>.

⁵ Children's Bureau, "8.4C Title IV-E, General Title IV-E Requirements, Child Support."

⁶ Erin Sugrue, "Evidence Base For Avoiding Family Separation in Child Welfare Practice: An Analysis of Current Research," Alia Innovations, July 2019, <https://www.aliainnovations.org/research-brief?hsLang=en>; Joseph J. Doyle, Jr., "Child Protection and Child Outcomes: Measuring the Effects of Foster Care," *American Economic Review*, Vol. 97, No. 5, December 2007, <https://www.jstor.org/stable/30034577>.

⁷ *Ibid.*

⁸ Carol Chellew, Jennifer L. Noyes, and Rebekah Selekmán, "Child Support Referrals for Out-of-Home Placements: A Review of Policy and Practice," Institute for Research on Poverty, October 2012, https://www.irp.wisc.edu/research1/childsup/espolicy/pdfs/2011-12/Task6_CS_2011-12_CSPIL.pdf.

determine whether the child support referral would be in the child's best interests, with one study finding that fewer than five states give specific criteria for exemptions to referral.⁹ Moreover, a different study found little association between parents' income, whether they'll be subject to a child support order, and the amount of the order, suggesting that their ability to pay often has not been considered when determining whether to refer a case or when calculating a support order.¹⁰

The new guidance clarifies the application of "best interests" and encourages child welfare agencies to refer cases to child support enforcement *only* in "very rare circumstances." If states heed the federal government's advice it would result in the following standard practice for families under the purview of Title IV-E:¹¹

- No child support orders would be made against parents when their children are placed in foster care.
- A non-custodial parent's child support payments would not be redirected to the state to recoup foster care costs and instead would continue to go to the custodial parent.

Charging Parents for Foster Care Delays Family Reunification

Most children are removed from their families and enter the foster care system at least in part because their parents struggle to provide for their basic needs.¹² (See text box, "Most Children Enter Foster Care Due to Neglect, With Economic Hardship a Prevalent Risk Factor.") Research consistently shows that parents whose children are placed in foster care are disproportionately low income and experience significant rates of deep poverty.¹³ One study in Minnesota found that 47 percent of parents with child support obligations whose children were removed from their care had no recorded earnings, and that 32 percent of such parents had an annual income between 0 and \$10,000.¹⁴ Another study in Wisconsin found that 55 percent of mothers with child support

⁹ *Ibid.*

¹⁰ Maria Cancian *et al.*, "Making parents pay: The unintended consequences of charging parents for foster care," University of Wisconsin-Madison, Institute for Research on Poverty, October 13, 2016, https://www.researchgate.net/publication/309200041_Making_parents_pay_The_unintended_consequences_of_charging_parents_for_foster_care.

¹¹ Schomburg and Gray, *op. cit.*

¹² Melissa Dolan *et al.*, "NSCAW II Baseline Report: Introduction to NSCAW II," Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services, August 2011, https://www.acf.hhs.gov/sites/default/files/documents/opre/nscaw2_intro.pdf.

¹³ Jennifer Hook *et al.*, "Trajectories of economic disconnection among families in the child welfare system," *Social Problems*, Vol. 63, No. 2, May, 2016, <https://pubmed.ncbi.nlm.nih.gov/33883781/>; Ji Young Kang *et al.*, "Family earnings and transfer income among families involved with child welfare," *Child Welfare*, Vol. 97, No. 1, 2019, <https://www.jstor.org/stable/48623577>.

¹⁴ Trish Skophammer, "Child support collections to offset out of home placement costs: A study of cost effectiveness," Dissertation for The Graduate School of Hamline University, June 2017, <https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/Skophammer%20Dissertation%202017.pdf>.

obligations had no earnings one year before their child's removal and placement in foster care and that 28 percent had earnings that were below \$10,000.¹⁵

Charging parents for foster care by imposing a child support order, which is often done through wage garnishment, deepens many of these families' economic distress. This can make it harder for the families to maintain or secure stable housing, among other hardships, and can hinder their ability to reunify because the parents have become *less* able to meet their children's basic needs.

Debt can accrue for parents who are unable to pay or whose earnings and wage garnishment are less than what the state is charging them for a support order. To collect past-due orders, states use a variety of enforcement tools that add to these parents' financial precarity; states report parents to credit bureaus and garnish their tax refunds, and, more recently, stimulus checks. This can lead to inadequate income and bad credit, which make it harder for families to find or maintain housing — a key condition for parents to be reunited with their children — or to afford car repairs needed to travel to work.¹⁶ Further, when parents don't pay, states can revoke driver's and professional licenses, worsening barriers to finding and maintaining employment.

These problems don't necessarily end after the family is able to reunify. Debt from unpaid child support while the child was in foster care can accumulate with interest and follow families, making it harder for them to climb out of poverty and risking further interactions with child protection services even after reunification. Indeed, studies show that when a child's parents are experiencing poverty, the child is more likely to reenter foster care again following reunification.¹⁷

Ultimately, charging parents generally undermines the central goal of the foster care program — family reunification. Research shows that parents who experience a decline in income during their child's placement in foster care may also experience a delay in reuniting with their child.¹⁸ In addition, research in Wisconsin finds that charging parents for their children's foster care impacts the length of foster care placement; children in cases where orders are imposed tend to have longer stays than in cases without.¹⁹ The same study found that even small child support orders delay reunification by more than six months, a statistic the HHS guidance cites in calling for minimizing the orders' use. Ultimately, increasing the amount of time a child is placed in foster care also drives

¹⁵ Maria Cancian *et al.*, "Interactions of the Child Support and Child Welfare Systems: Child Support Referrals for Families Served by the Child Welfare System," Institute for Research on Poverty, University of Wisconsin — Madison, May 2012, https://www.irp.wisc.edu/wp/wp-content/uploads/2018/06/Task13A_CS_09-11_Final.pdf.

¹⁶ Joseph Shapiro, "States send kids to foster care and their parents the bill — often one too big to pay," NPR, December 27, 2021, <https://www.npr.org/2021/12/27/1049811327/states-send-kids-to-foster-care-and-their-parents-the-bill-often-one-too-big-to->.

¹⁷ Emily Smith Goering and Terry V. Shaw, "Foster care reentry: A survival analysis assessing differences across permanency type," *Child Abuse & Neglect*, Vol. 68, June 2017, <https://doi.org/10.1016/j.chiabu.2017.03.005>; Sangmoo Lee, Melissa Jonson-Reid, and Brett Drake, "Foster Care Re-entry: Exploring the Role of Foster Care Characteristics, In-home Child Welfare Services and Cross-sector Services," *Children and Youth Services Review*, Vol. 34, No. 9, September 1, 2012, <https://doi.org/10.1016/j.childyouth.2012.05.007>.

¹⁸ K. Wells and S. Guo, "Reunification of foster children before and after welfare reform," *Social Service Review*, Vol. 78, No. 1, pp. 74–95, 2004, <https://doi.org/10.1086/380766>; K. Wells and S. Guo, "Welfare reform and child welfare outcomes: A multiple-cohort study," *Children and Youth Services Review*, Vol. 28, pp. 941–960, 2006, <https://doi.org/10.1016/j.childyouth.2005.10.009>.

¹⁹ Cancian *et al.*, 2012.

up the costs of their care and the bills that parents receive. Importantly, parents have a limited amount of time to get their children back; federal law requires states to begin procedures to terminate parental rights and to place the child for adoption in most cases if a child spends 15 out of 22 months in foster care.²⁰

Most child welfare experts agree that in most cases, family reunification is the better option to promote children’s lifelong well-being.²¹ Research demonstrating that children have better cognitive, behavioral, and health outcomes when raised in stable settings suggests that achieving timely reunification can promote better outcomes for most children in foster care.²² Research also shows that children are less likely to reunite with their families when they spend longer amounts of time in foster care or experience more placements.²³

These findings underscore the need to remove barriers to reunification, such as child support orders that cause more financial hardship for parents. The new guidance by HHS allows states to end the general practice of charging parents for foster care placements, which should reduce the financial strain on families and help them reunify with their children.

²⁰ Emily Madden and Laura Radel, “Freeing Children for Adopting within the Adoption and Safe Families Act Timeline: Part 1 – The Numbers,” Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, February 2021, <https://aspe.hhs.gov/sites/default/files/private/pdf/265036/freeing-children-for-adoption-asfa-pt-1.pdf>.

²¹ Erin Sugrue, “Evidence Base for Avoiding Family Separation in Child Welfare Practice,” Alia, July 2019, https://aliainnovations.egnyte.com/dl/Wz6o3au5hP?_hstc=215842504.101d185362cb008fc6ef08eb2f0b634e.1662133857642.1662133857642.1664464681901.2&_hssc=215842504.1.1664464681901&_hsfp=817607603&submissionGuid=53fbe13e-bd30-4568-8487-c738104eab4c.

²² Terry-Ann L. Craigie, Jeanne Brooks-Gunn, and Jane Waldfogel, “Family Structure, Family Stability and Outcomes of Five-year Old Children,” *Families, Relationships and Societies*, Vol. 1, No. 1, March 1, 2012, pp. 43–61, <https://doi.org/10.1332/204674312X633153>; Children’s Bureau, Administration for Children and Families, U.S. Department of Health and Human Services, “Supporting Successful Reunifications,” October 2017, https://www.childwelfare.gov/pubPDFs/supporting_reunification.pdf.

²³ Becci A. Akin, “Predictors of Foster Care Exits to Permanency: A Competing Risks Analysis of Reunification, Guardianship, and Adoption,” *Children and Youth Services Review*, Vol. 33, No. 6, June 2011, <https://doi.org/10.1016/j.childyouth.2011.01.008>; Sarah Carnochan, Chris Lee, and Michael J Austin, “Achieving timely reunification,” *Journal of Evidence-Based Social Work*, Vol. 10, No. 3, May 24, 2013, <https://www.tandfonline.com/doi/abs/10.1080/15433714.2013.788948>.

Charging Parents for Foster Care Disproportionately Impacts Families of Color

Racial disparities in foster care, themselves largely the product of disparities in the economy and elsewhere, mean that the foster care system's child support obligations disproportionately harm families of color. A significant body of research documents that certain racial and ethnic groups are overrepresented in the child welfare system compared to their representation in the general population.²⁴ That has long been particularly true for Black and American Indian children.²⁵ In 2020, 23 percent of children in foster care were Black and 2 percent were American Indian, compared to their 14 percent and 1 percent shares of the general child population, respectively.²⁶

Some studies suggest that disparities may be partially linked to higher poverty rates among Black and American Indian families, rates that are attributable in part to structural discrimination disproportionately impacting Black and American Indian people in areas like housing, education, and employment.²⁷ These structural barriers can challenge a parent's ability to find and maintain stable housing and well-paid employment to provide for a child's basic needs, which may lead to a child welfare assessment that finds neglect. In addition, both groups' historical legacies include the forced removal of children from their families — histories that have likely had a lasting impact on these communities and their connection to today's child welfare system.²⁸

²⁴ Jude Mary Cénat *et al.*, "Overrepresentation of Black children in the child welfare system: A systematic review to understand and better act," *Children and Youth Services Review*, Vol. 120, January 2021, 105714. <https://doi.org/10.1016/j.childyouth.2020.105714>; Shamani Ganasarajah, Gene Siegel, and Melissa Sickmund, "Disproportionality Rates for Children of Color in Foster Care (Fiscal Year 2015)," National Council of Juvenile and Family Court Judges, September 2017, www.ncjfcj.org/wp-content/uploads/2017/09/NCJFCJ-Disproportionality-TAB-2015_0.pdf; S.J. Wells, "Disproportionality and disparity in child welfare: An overview of definitions and methods of measurement," in *Challenging racial disproportionality in child welfare: Research, policy, and practice*, D.K. Green *et al.* (Eds.), (pp. 3–12), CWLA Press, 2011.

²⁵ Kids Are Waiting and National Indian Child Welfare Association (NICWA), "Time for Reform: A Matter of Justice for American Indian and Alaskan Native Children," November 2007, https://www.pewtrusts.org/-/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/foster_care_reform/nicwareportpdf.pdf; Tanya Asim Cooper, "Racial Bias in American Foster Care: The National Debate," *Marquette Law Review*, Vol. 97, No. 2, April 2014, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2426210.

²⁶ Kids Count Data Center, "Children in foster care by race and Hispanic origin in the United States," Annie E. Casey Foundation, 2020, <https://datacenter.kidscount.org/data/tables/6246-children-in-foster-care-by-race-and-hispanic-origin?loc=1&loct=1#detailed/1/any/false/574,1729,37,871,870,573,869,36,868,867/2638,2601,2600,2598,2603,2597,2602,1353/12992,12993>.

²⁷ Cooper, *op. cit.*; Megan Martin and Dana Dean Connelly, "Achieving Racial Equity: Child Welfare Policy Strategies to Improve Outcomes for Children of Color," Center for the Study of Social Policy, 2015; Mark D. Shroder and Michelle P. Matuga, Housing Discrimination Today, Office of Policy Development and Research, *Cityscape*, Vol. 17, No. 3, 2015, <https://www.huduser.gov/portal/periodicals/cityscpe/vol17num3/index.html>; Margery Austin Turner *et al.*, "Housing Discrimination Against Racial and Ethnic Minorities," Urban Institute, June 11, 2013, https://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012.pdf; Patrick M. Kline, Evan K. Rose, and Christopher R. Walters, "Systemic Discrimination Among Large U.S. Employers," National Bureau of Economic Research, Working Paper 29053, revised May 2022, <https://www.nber.org/papers/w29053>; National Public Radio, Robert Wood Johnson Foundation, and Harvard T.H. Chan School of Public Health, "Discrimination in America: Final Summary," January 2018, <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/94/2018/01/NPR-RWJF-HSPH-Discrimination-Final-Summary.pdf>.

²⁸ Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare*, Civitas Books, 2002, pp. 67–70; National Indian Child Welfare Association, "Indian Boarding Schools," updated 2022, <https://www.nicwa.org/boarding-schools/>.

However, some in the child welfare research community argue that higher poverty rates by themselves fall short of explaining why the child welfare system affects such large numbers of Black and American Indian children and families, and that racial bias, including racist stereotypes about parental unfitness, should also be examined as a contributing factor.²⁹ A significant body of research demonstrates that racial disparities exist at every decision-making stage along the child welfare continuum, including in reporting, investigations, and what results from the investigations, suggesting that families of color are also treated differently than white families once they are involved in child welfare.³⁰

At earlier decision-making stages — reporting and investigations — research shows that Black families are reported and investigated by child protection services at higher rates than other families.³¹ Another study finds that racial disparities for Black and American Indian families occurring in three different decision-making stages — child protection investigations, substantiated investigations, and placement into foster care — exist at the national, state, and county levels.³² The same study shows that Black and American Indian children are increasingly represented at later stages such as foster care placement, whereas the proportion of white children decreases at later decision-making stages.

Research also finds that Black children spend more time in foster care and are less likely to reunite with their families.³³ Other studies demonstrate that both Black children and American Indian children are at greater risk of being removed from their homes and placed in out-of-home care, and are more likely to experience the termination of parental rights.³⁴

²⁹ Roberts, pp. 60–67.

³⁰ Margaret Simms, “Identifying Racial and Ethnic Disparities in Human Services,” Urban Institute, November 2017, https://www.urban.org/sites/default/files/publication/94986/identifying-racial-and-ethnic-disparities-in-human-services_1.pdf; Denette M. Derezotes, John Poertner, and Mark F. Testa, eds. *Race Matters in Child Welfare: The Overrepresentation of African American Children in the System*, 2005.

³¹ Kathryn S. Kruse, “Differences in Racially Disproportionate Reporting of Child Maltreatment Across Report Sources,” *Journal of Public Child Welfare*, Vol. 7, Issue 4, pp. 351–369, September 5, 2013, <https://doi.org/10.1080/15548732.2013.798763>; Hyunil Kim *et al.*, “Lifetime Prevalence of Investigating Child Maltreatment Among US Children,” *American Journal of Public Health*, Vol. 107, pp. 274–280, February 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5227926/>.

³² Robert B. Hill, “An Analysis of Racial/Ethnic Disproportionality and Disparity at the National, State, and County Levels,” Casey-CSSP Alliance for Racial Equity in Child Welfare, 2007, <https://assets.aecf.org/m/resourcedoc/aecf-AnalysisofRacialEthnicDisproportionality-2007.pdf>.

³³ U.S. Government Accountability Office, Report to the Chairman, Committee on Ways and Means, House of Representatives, “African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care,” July 2007, <https://www.gao.gov/assets/gao-07-816.pdf>. Yuhwa Eva Lu *et al.*, “Race, ethnicity, and case outcomes in child protective services,” *Children and Youth Services Review*, Vol. 26, No. 5, May 2004, <https://www.doi.org/10.1016/j.childyouth.2004.02.002>.

³⁴ Youngmin Yi, Frank R Edwards, and Christopher Wilderman, “Cumulative Prevalence of Confirmed Maltreatment and Foster Care Placements for US Children by Race/Ethnicity,” *American Journal of Public Health*, Vol. 110, No. 5, May 2020, <https://www.doi.org/10.2105/AJPH.2019.305554>; Kathryn Maguire-Jack, Sarah A Font, and Rebecca Dillard, “Child protective services decision-making: The role of children's race and county factors,” *American Journal of Orthopsychiatry*, Vol. 90, No. 1, 2020, <https://www.doi.org/10.1037/ort0000388>; Christopher Wilderman, Frank R. Edwards, and Sara Wakefield, “The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000–2016,” *Child Maltreatment*, Vol. 25, May 21, 2019, <https://doi.org/10.1177/1077559519848499>.

Separating families is thus harmful not only to individual families, but also to entire communities facing family separation at disproportionate rates.³⁵ Adopting the new guidance is a step in the right direction for states to help address these racial disparities in the child welfare system.

Efforts to Collect Child Support Are Not Cost Effective

In addition to their harmful effects on families, efforts to collect child support payments from parents are not cost effective: extending a child's length of stay in foster care drives up costs to states while child support enforcement agencies *lose* money overall on child support orders for children in foster care.³⁶

Studies show that more dollars are spent pursuing collections than are collected. A 2017 study in Minnesota found that for every dollar the state child support enforcement agency spent to collect support for this group, it collected only 24 to 40 cents,³⁷ and researchers in Washington State found a similar result — only 39 cents collected per dollar spent.³⁸ These findings are also consistent with a 2020 study in Orange County, California, which found that for every dollar spent, county offices only collected 41 cents.³⁹

When agencies manage to collect payments, it is usually done by garnishing the paychecks and tax refunds of parents.⁴⁰ According to federal data, almost \$96 million was collected from parents in 2021, and the highest total amount, over \$113 million, was collected in 2020 when states garnished parents' COVID-19 stimulus checks,⁴¹ which were intended to lessen pandemic-related economic hardship. These collections withheld funds that these parents needed but represent just a small fraction of the total costs of IV-E foster care, which amounted to about \$14 billion in 2021.⁴²

³⁵ Roberts, *op. cit.*

³⁶ Carol Chellew, Jennifer L. Noyes, and Rebekah Selekmán, "Child Support Referrals for Out-of-Home Placements: A Review of Policy and Practice," Institute for Research on Poverty, October 2012, https://www.irp.wisc.edu/wp/wp-content/uploads/2018/06/Task6_CS_2011-12_CSPII.pdf.

³⁷ Skophammer, *op. cit.*

³⁸ Washington State Department of Social and Health Services, Division of Child Support, "Washington's Cost Effectiveness for Foster Care Child Support Cases," June 7, 2019, <https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/Cost%20Effectiveness%20FC%20collections%20FINAL.pdf>.

³⁹ Orange County Department of Child Support Services, "Child Support and Foster Care," July 2020, <https://www.css.ocgov.com/sites/css/files/import/data/files/116568.pdf>.

⁴⁰ Shapiro, *op. cit.*

⁴¹ Office of Child Support Enforcement, "Preliminary Report FY 2021," Table P-12, Distributed Foster Care Collections for Five Consecutive Years, https://www.acf.hhs.gov/sites/default/files/documents/ocse/fy_2021_preliminary_report.pdf.

⁴² Children's Bureau, Office of the Administration for Children & Families, U.S. Department of Health and Human Services, "Title IV-E Programs Expenditure and Caseload Data 2021," see spreadsheet FY 2021 Title IV-E Foster Care Claims and Caseload, August 2, 2022, <https://www.acf.hhs.gov/cb/report/report/programs-expenditure-caseload-data-2021>.

State Child Welfare Agencies Should Implement Policies Needed to Adopt New Guidance

Children receive IV-E foster care services when they are removed from households with very low incomes. Ultimately, charging these parents for foster care is not cost effective; harms families who are already experiencing economic difficulties; disproportionately impacts Black and American Indian families; and undermines the central goal of the foster care program: family reunification. As HHS' recent guidance notes, "It is not in the best interest of any family to be pursued for child support when they have already been whipsawed by economic insecurity, family instability, and separation."

The guidance therefore advises states to implement "across-the-board" policies that default to forgoing child support orders for these families — with exceptions only in very rare instances where there will be positive or no adverse effects on the child, or if such an order will not impede reunification. One way to achieve this, it says, is to avoid support obligations in any cases when a family's income is below a certain level. For example, states could automatically exempt all Title IV-E foster care cases. (Title IV-E income eligibility is lower than 100 percent of the federal poverty level in all states except one.) For those states that extend child support services to non-IV-E cases, they could set the income level at which support orders can apply high enough to ensure that orders are issued only to families who are economically secure. That is, their incomes should be far above the poverty line and high enough to afford stable housing, food, clothing, transportation, child care, and other child needs after factoring in the costs of any child support obligations.

A state could, for example, automatically exempt families with incomes below the area median income, or some multiple of area median income, to ensure that families with economic stress are not charged for foster care placements. States that charge parents whose children are not IV-E eligible could, if they chose to, take a closer look at families with incomes above this "default" level to be sure that they are financially secure, that a child support order would be in the child's interest, and that the order would pose no risk to reunification before referring the case to child support. Even for families with incomes near median income, a child support order could still create financial challenges and pose a barrier to reunification.

For cases with established orders, the guidance recommends that agencies consider six-month reviews to determine whether orders continue to be in a child's best interest, and to stop orders if they aren't. And when able, states should write off past support owed to the state.

States should move expeditiously to end all orders for children whose families do not have high incomes, to make the necessary policy changes to ensure the default determination is to *not* refer parents to the child support agency, and to only consider an order when families are economically secure.

Washington State recently said it is taking steps to align with the new guidance.⁴³ And California just passed legislation that requires the state to develop regulations that limit referrals only to cases

⁴³ Washington State Department of Children, Youth & Families, "DCYF Child Support Collection Referrals End Today," September 1, 2022, <https://www.dcyf.wa.gov/news/dcyf-child-support-collection-referrals-end-today>.

where it can be demonstrated that referral is in the best interest of the child.⁴⁴ Other states should follow suit to better support parents' efforts to reunite with their children and promote family well-being. States may be able to claim Title IV-E administrative funds to make the systems changes necessary to align with the new federal guidance. To do so, states will need a cost allocation plan approved by the Children's Bureau and Office of Child Support Enforcement program offices.⁴⁵

Although the steps a state may need to take to align with the guidance may vary, most states will need to take the following steps:

- **Develop clear guidance** establishing non-referral to child support enforcement agencies as the standard practice;
- **Reprogram computer systems** to stop the automatic referral of cases;
- **Provide adequate training** for caseworkers and other agency personnel on new guidance and its practices, including specific criteria for staff to determine the rare cases that should be referred;
- **Establish quality control mechanisms** to review cases that are flagged for referral before they are referred; and
- **Adopt practices that improve coordination between child welfare and child support programs** — programs that are often siloed even though many families involved in the child welfare system are also served by child support.

⁴⁴ An act to amend Section 17552 of the Family Code, relating to child welfare agencies, Assembly Bill 1686, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1686.

⁴⁵ Schomburg and Gray.