



THE
CHILD WELFARE
POLICY & **GROUP**
PRACTICE

**Iowa Department of Human Services
Initial Targeted Child Welfare Review**

Conducted by:

**The Child Welfare Policy and Practice Group
October 31, 2017**

Reviewer Biographies

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Director, Child Welfare Policy and Practice Group

Paul Vincent is director of the Child Welfare Policy and Practice Group, a nonprofit technical assistance organization focused on front-line practice change. Vincent has directed the Child Welfare Group since its inception in 1996. In that role, he has led the organization's work in over twenty states, providing technical assistance in strategic system design, practice model development, curriculum development, training, practice coaching, and quality assurance. The Child Welfare Group has also been involved in several court monitoring roles. Vincent served as a member of the Marisol Advisory Panel in New York City, and is currently a member of the Tennessee Technical Assistance Committee related to the Brian A. settlement and chair of the Katie A. Advisory Panel in Los Angeles. The Child Welfare Group also served as the court monitor in Utah's David C. child welfare settlement.

Prior to the creation of the Child Welfare Group, Vincent worked for twenty-five years in the Alabama Department of Human Services, where, as child welfare director, he led the implementation of the RC class action child welfare settlement agreement during its first six years. The RC reforms had a transformational effect on child welfare practice and outcomes in Alabama. During that period, Vincent was awarded NAPCWA's Annual Award for Excellence in Child Welfare Administration.

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Independent Consultant

Sue Steib has over forty-five years of child welfare experience including direct practice, agency administration, research, and consultation. Prior to becoming an independent consultant and joining the Child Welfare Policy and Practice Group in this initiative, she was senior director of strategic consulting at Casey Family Programs (CFP), a position she held for eight years. During that time, she led CFP's work in Louisiana and Oklahoma, joining with child welfare leaders there in their efforts to reduce the need for out-of-home care for children. Additionally, she served as part of a consulting team providing support to child welfare systems in fifteen states. From 2001 to 2008, Steib was director of the Research to Practice initiative at the Child Welfare League of America (CWLA), leading work to synthesize current research in child welfare and related fields and make it accessible to agency leaders and direct practitioners through papers, workshops, and direct consultation. Steib came to CWLA after a thirty-one year career in Louisiana's child welfare system, where she served in positions ranging from caseworker and casework supervisor to administrator, leaving as the statewide child welfare program director.

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I. Purpose and Focus of the Review

The Child Welfare Group was contacted by the Iowa Department of Human Services, Child Welfare Division following the deaths of two children who had been placed in adoption through the department. These youth, both girls in their teens, were in finalized, subsidized adoptive placements in separate homes. Both were home schooled and both died of starvation. These two incidents, happening within a few months of each other, caused child welfare and state leaders to question what, if any, role policies and practices in the agency may have played.

Full scale reviews of child welfare systems can be very lengthy. Because the state is anxious for direction in preventing such tragedies in the future, the Child Welfare Group was asked to conduct a two-phase review, with the initial phase being designed to identify areas calling for immediate action as well as those which require further study. Thus the phase one review and findings described in this report are limited in scope and, in some instances, raise additional questions.

Reviewers did not conduct an analysis of the two index cases that precipitated this work; that is being done by the Iowa Ombudsman. Rather, the focus of this review was on system concerns which these cases raised and primarily on those involving the child protection intake and assessment functions of the child welfare system. Obviously, given that both of these youngsters were in adoptive placements, their situations also suggest the need to examine placement decision making and support. However, the more immediate concerns related to the fact that both had, since their respective adoptions, been the subjects of maltreatment reports that did not result in intervention to prevent their deaths.

II. Methodology

A. Data Collection and Analysis

Reviewers used a variety of data collection techniques including interviews of both individuals and stakeholder groups; review and analysis of quantitative data, especially that related to the DHS workforce and workload and to intake and assessment activities; and documents including intake and assessment forms, practice guidance, training topics, and service contracts.

Interview participants included DHS administrators, managers, supervisors, and case managers, judges, attorneys representing the state, parents, and children, service providers, parents and grandparents, youth, foster and adoptive parents, law enforcement, medical professionals, representatives of the school system, and leaders of community prevention and service groups. One or both reviewers interviewed a total of 137 individuals in 39 sessions. Some participants were interviewed more than once to capture additional information.

All interviews followed a format of inquiring about agency and system strengths and needs. Where needs, in particular, were identified, interviewees were asked about underlying reasons, history, and barriers to improvement. Interviewers took detailed notes which were later transcribed.

Analysis of interviews to identify themes was accomplished by standard coding processes for qualitative data in which interview notes were coded according to a priori and emerging codes. A priori codes included expected categories such as workforce and workload, organizational structure, leadership, data and technology, administration and management, courts and legal system, placement resources, and service resources. Codes such as communication and resource family support emerged from the data.

Assessment of documents focused primarily on consistency with reviewers' understanding of current best practices in child welfare while review of quantitative data was directed to identifying work flow in the agency's intake and investigations functions and, where possible, comparison with national norms.

B. Limitations of the Review

Time and resources provided for this review limited its scope and depth in a number of ways. First, interviews were conducted primarily with state level DHS administrators, and with lower level staff, larger system stakeholders, service recipients, and other community members only in the Des Moines and Cedar Rapids services areas. Additionally, reviewers did not read case records or observe the actual work of direct service personnel as might be done in a more in-depth assessment.

There was limited availability of what are generally viewed as key sources of information about practice and performance. While some quantitative data concerning intake and assessment were able to be obtained fairly quickly, that was not true of data reflecting the volume and outcomes in ongoing services due to the limitations DHS currently experiences in the facility of its data system and in the availability of personnel with the capacity to produce reports. Further, reviewers understood that agency policy was undergoing revision and thus relied upon the existing policy manual, rules and practice guides to gain an understanding of policy related to intake and child abuse and family assessment processes. Finally, reviewers did not delve deeply into the department's human resources functions as they affect the child welfare workforce. Thus many questions remain concerning the hiring and selection process, length of time required to fill vacancies, the performance assessment and professional development processes, and the metrics applied in calculating caseload and workload.

III. Agency Structure and Capacity

A. Structure

The Iowa Department of Human Services (DHS) is a large human services agency that has responsibility for the administration of multiple programs. In addition to being the state's legally mandated child protection and child welfare authority, it administers adult protective services, placement and supervision of the juvenile justice population, child support enforcement activities, public assistance, and medical services.

Activities of DHS personnel in the agency's six service area offices (the Central Intake Service Area, and five areas comprising geographic subdivisions across Iowa) are managed by the DHS operations division. Staff who fulfill functions related to child protection investigations and the provision of ongoing services to children and families who are the subjects of child maltreatment reports are located in county offices

which also house personnel who fulfill the other functions of DHS. Direct services staff are specialized in that they provide only child welfare and adult protection functions and are supervised by personnel who work only in these areas. Above the level of the direct services supervisor, managers also have responsibility for the other functions of the department.

Child welfare policy and practice guidelines are developed by the Child Welfare Policy Division at the state level. These staff do not have direct oversight of the frontline workforce that actually executes the child protection and ongoing child welfare functions in the county offices but rather work in tandem with the operations division which actually exercises authority over the activities of the county offices.

DHS has full-time offices in 42 of the state's 99 counties. The other 57 counties have office space, but it is not staffed on a full-time basis. This means that personnel from the nearest fully staffed offices travel to work in those counties. Some smaller county offices house child welfare casework staff whose supervisors are located in an adjacent county.

DHS uses a model of child welfare service delivery in which its front-line staff serve as "case managers," meaning that they coordinate casework activities, many of which are actually performed by individuals who are employed in organizations under contract with DHS or in other agencies. The majority of direct services to families are provided by Family Safety, Risk, and Permanency (FSRP) staff who work for contracted agencies. Contracted personnel also have primary responsibility for direct services in family reunification, monitoring of in-home safety plans, and in recruiting, assessing, and training resource families who provide care for children in protective custody.

B. The Child Welfare Workforce and Workload

Staffing and Qualifications

Service delivery staff in child welfare are of two primary classifications: Social Worker II and Social Worker III. The Social Worker II position is responsible for ongoing services while the III performs the child abuse or family assessments that are done following a report of suspected abuse or neglect being accepted at intake. Their activities are over seen by Social Work Supervisors, most of whom have risen from positions as social workers in direct services.

Social worker is not a legally protected title in Iowa and thus there are no educational or licensure requirements for staff beyond possession of a general baccalaureate degree. Those without social work degrees are required to have at least three years of experience in some aspect of social services although it was not clear to the reviewers just what kinds of work fulfills that requirement. Persons having a baccalaureate degree in social work must have two years of experience and those with a master's degree in social work may be hired without experience.

Some of those interviewed expressed concern that many of the personnel responsible for service delivery lacked the level of expertise required, commenting that educational requirements are not as high as they should be or that there should be a greater commitment to professional social work practice in the rank and file of the agency.

Staff Stability

Rates of turnover among DHS child welfare staff are relatively low compared with those in many other states. It was reported that turnover among both Social Worker II and III positions over the last five

years has ranged from 3.4 percent to 8 percent. Last year it stood at less than 2 percent, lower than the 8% for state employees overall. The average tenure among Social Worker IIIs performing child abuse and family assessments is 14 years and among Social Worker IIs, 11 years. These figures depict a much more stable workforce than is typically seen in child welfare agencies in the United States where turnover rates average about 20 percent and are often much higher.

Workforce stability is attributed largely to the fact that salaries are relatively good. Additionally, Social Worker IIIs performing child protection assessments are able to draw overtime. Reviewers were told by a number of these staff that they would never consider moving to a supervisor position as the loss of overtime would mean a reduction in pay even with a promotion since supervisors are not eligible for over time compensation.

While statewide figures depict an exceptionally stable workforce, information obtained in interviews indicated that there are exceptions in some counties. Polk County was consistently described as being a county with very high turnover and high turnover was cited in Linn County as well.

Workload

Workload in child welfare is an issue of concern at the current time. Reviewers were unable to determine the exact status of current caseloads. Figures were provided for average caseloads based on the number of positions provided. Reviewers were told that case managers generally carry about 15 families or about 30 children in a combination of out-of-home care and in-home service cases. Assessment staff receive an average of 11.5 new cases per month, down from 13.9 in 2012. This figure was reported to have been stable for the past few years.

Actual caseloads in some counties were reported to be much higher than the statewide average. Reviewers were told this was true in both Polk and Linn counties. Some counties were reported to have ongoing caseloads as high as 40 families with child protection averaging over 20 cases per month. In the two service areas in which interviews were conducted, system partners in the courts, other public agencies, and providers consistently expressed concern about workloads in DHS, with some using the terms “brutal” or “overwhelming”.

A report of cases per worker as of April of 2017, showed 119 of 195 Social Worker IIIs receiving an average of between ten and fourteen cases per month with 61 receiving between fifteen and nineteen. Two had greater than twenty and only thirteen received nine or less. Among 312 Social Worker IIs, 275 were reported to have caseloads of fifteen cases or greater with 144 of those at thirty or greater and over forty exceeding forty. In the case of Social Worker IIs, it is not clear whether cases are considered individual children or families. However, even if these are weighted more heavily as children, these caseloads far exceed those prescribed by Child Welfare League of America Standards or recommended in most child welfare workload studies.

The ratio of supervisors to case managers is one to seven which exceeds the one to five ratio recommended by the Child Welfare League of America. Workloads of some supervisors are also affected by the fact that they must travel to multiple counties. In addition to case consultation, supervisors have responsibility for overseeing and documenting the transfer of learning of new staff who are undergoing training during their first year of work. Although this is a duty that is certainly appropriate for supervisors, it does increase workload, particularly in those counties with higher

turnover in which supervisors are thus being assigned new trainees more frequently than in those counties where the workforce is relatively stable.

Training and Professional Development

New staff receive four weeks of training consisting of about 160 hours over the course of their first year of work with on-line and classroom training being interspersed with field experience. All child welfare personnel are required to have 24 hours of ongoing training per year. DHS has a relationship with Iowa State University to provide some training using either its own faculty or subcontracting with other professionals who have received positive staff evaluations based on delivery of prior training. In addition, some DHS staff also serve as trainers.

DHS conducts annual training needs surveys and undertakes to develop new course offerings based on survey results. Individual needs for ongoing learning are intended to be identified as part of the annual performance assessment process. It was not clear to reviewers, however, to what extent that is actually being done.

A number of those interviewed, including some DHS staff, stated that training is insufficient. Areas in which some external professionals, including mandated reporters, indicated having observed deficiencies are in interviewing skills, particularly in interviewing children, skills in engaging parents and other subjects of reports, assessing the vulnerability of children, and familiarity with indicators of maltreatment.

DHS has a contractual relationship with Iowa State University using federal Title IV-E funding that provides subsidies for the professional development of child welfare staff. In many states, such university-agency partnerships also support stipend and internship programs designed to recruit BSW students into child welfare practice and to provide opportunities for those already employed, especially supervisors, to pursue masters in social work. Iowa DHS does not currently use its IV-E funding capacity in this way.

Staff Morale

Staff morale in the service areas reviewers visited was described by many of those both within and outside of DHS as poor. Recent legislative changes in collective bargaining, budget cuts, workload, and a culture that seems heavily compliance focused were all cited as reasons for this. One advocate observer commented that, "There has for a while now been the expectation of doing more with less. After a point, it becomes impossible."

Some also referenced lack of support within some offices with external system partners in particular observing that front line staff seem to feel that "no one has their backs", and that case managers or supervisors risk becoming scapegoats in case crises regardless of their level of skill or other work record.

C. Administrative Systems

Child Welfare Policy Division

Reviewers had multiple interviews with both the Child Welfare Policy Director and the Child Welfare Bureau Chief as well as single interviews with lead administrators in key program areas such as child protection, foster care, adoptions, and those overseeing contracts with service providers. In general,

these individuals have impressive credentials. Most are degreed social workers with several, including the policy director and bureau chief, having Masters in Social Work, and they have lengthy child welfare experience. Most demonstrated knowledge of current best practices including a number of evidence-based models and were able to identify challenges as well as strengths in their areas of responsibility.

Leaders of provider agencies and other system stakeholders tended to express confidence in these administrators, indicating that they were able to communicate well with them and that they found them to be collaborative and supportive of public-private partnership efforts to improve services to children and families. They were also described by several informants outside of DHS as being forward thinking and as doing the best that can be done with resources that, in some respects, are very limited.

Data Capacity

DHS uses the web-based JARVIS system for its intake and assessment functions. This system is updated daily and is reported to provide easily retrievable data tracking intake of reports and their disposition. Unfortunately, the department's capacity to track and easily access and analyze data for ongoing services and children and families involved in out of home care is far less robust. Administrators report that it is badly outdated. The length of time required to retrieve the data requested by reviewers and the form in which it was ultimately produced suggest a system that is incapable of providing the kind of readily accessible, detailed, and easily read reports that twenty-first century child welfare systems require to manage effectively and to actively use data to drive continuous practice assessment and improvement.

Reviewers were told that DHS has outlined a plan for revision of the current child welfare system, but has no timeline for when resources may become available to build it. It was reported that, currently, the majority of funds available in DHS for information technology are being devoted to the system that supports medical assistance.

B. The Continuum of Child Welfare Services

Intake

Conditions under which reports of maltreatment are accepted and assessed by DHS are prescribed by state law and DHS policy. As in other states, Iowa's law and policy provide that the mandated child welfare agency is responsible for investigating reports alleging that a child is being abused or neglected by a person responsible for his or her care. Reports of maltreatment that do not involve a caregiver as an alleged perpetrator are the sole responsibility of law enforcement. The legal definition of a person responsible for a child's care in Iowa is, however, broader than that of many states and substantially broader than some. Although Iowa does not stand alone in its liberal definition a child's caregiver, it is definitely, in the opinion of reviewers, as broad as any and broader than most. A number of states confine the person responsible for a child's care to parents and legal guardians or custodians. Others also include other adults in the child's household, employees of child care facilities, or of institutions that have a legal responsibility for the care of the child. The Iowa definition has no limits based on age of the caregiver, legal status, or duration of the caregiving responsibility. This means that DHS can also be required to investigate reports of abuse involving only other children as alleged perpetrators in a household or care setting, those involving incidents occurring at the home of a neighbor, or in almost any other setting.

During regular business hours, reports alleging abuse or neglect are received by a central unit or “hotline” which is staffed by 23 Social Worker III and 2 Social Worker IV level staff. These personnel assess whether incoming calls meet the legal requirements of reports and are charged with getting as much information as possible on which to base decisions about the level of priority that will be assigned to a report and to facilitate the initiation of the assessment by designated staff. All calls that are initially rejected by intake staff are subjected to a supervisory review to confirm that the report should have been screened out. The two Social Worker IV staff in the intake unit review reports to identify needs of individual staff for further training and coaching.

Some of the Social Worker III staff working in intake have experience actually conducting child abuse or family assessments. However, that is not true of all. Several of those interviewed expressed concern that the intake unit can hire new Social Workers III who have no experience in the field.

The central intake unit currently receives an average of 250 calls per day and reports that call volume has increased this year. Since the two child deaths which precipitated this review, intake staff have been instructed to accept reports that otherwise meet the legal prerequisites whether or not the reporter is able to offer any information to indicate that the child has sustained harm or is actually threatened with harm as a result of the alleged maltreatment. The number of screened out intakes in Iowa has declined from about 50 percent to about 35 percent of all calls. This indicates that Iowa’s intake unit accepts more reports on average than do other child welfare systems given the most recently published national screen-out rate of 41.8 per cent.¹

After hours child protection intake is handled by operators at the Iowa State Training School for boys. Calls are then referred to designated Social Work Supervisors. Several of those interviewed within DHS voiced concern about lack of consistency in the after-hours intake process and expressed the view that the central intake unit should be expanded to receive calls around the clock.

Intake designates an assessment track and a response time for each accepted report based on the type of abuse or neglect alleged. Iowa, like many other states, uses a differential response (also called alternative response in some states) system that directs reports deemed to constitute lower risk to a less rigorous family assessment process. These reports allege denial of critical care, but lack any information to suggest imminent danger or injury. The response time for family assessments is 72 hours. As of January 2017, any report that alleges parents are using methamphetamine, amphetamine or have chemicals used in the production of these drugs in the home, even when a child is not present, will be accepted at intake and assigned to a child abuse assessment. Any report that alleges parents are using heroin, cocaine or opiates in the presence of a child, will be accepted and assigned to a child abuse assessment.

All reports that include allegations of immediate danger or harm are referred for child abuse assessments which have more detailed and rigorous investigation requirements. A response priority of one hour, 24 hours, or 96 hours is assigned depending upon the nature of the allegations and the circumstances described by the reporter.

Child Protective Services

Social Worker IIIs, who are based in county offices, conduct both family and child abuse assessments. Iowa, like other states, uses safety and risk assessment tools and all reports, regardless of the track

designated, receive a safety and risk assessment. Assigned caseworkers have ten days to complete a family assessment and twenty days to complete a child abuse assessment.

DHS uses a safety assessment instrument that closely aligns with those in use in other systems. It includes items intended to assess present or impending danger, caretaker capacities, current conditions within the family, child-caregiver interactions, and the home environment. Caseworkers are also required to describe current safety threats and to identify protective factors and the extent to which they might mitigate safety threats. Each child who is the subject of an assessment must be found to be either safe, unsafe, or conditionally safe based on protections that can be put in place to address specific dangers.

Both family and child abuse assessments also use a risk assessment tool to assess the degree of risk of significant harm in the longer term. Iowa uses a risk assessment tool developed and tested in Colorado. Reports of reliability and validity testing conducted by Colorado State University indicate that its items have at least moderate reliability and that they acceptably discriminate between those with greater and lesser likelihood of future referrals of maltreatment.

Child abuse assessments result in a finding of either “not confirmed”, “confirmed”, or “founded”. A designation of confirmed indicates that, while a finding of maltreatment was made, it was determined to be “isolated, minor, and unlikely to happen again”. Confirmed findings are not placed on the central child abuse registry. Founded cases are those deemed to involve greater degrees of harm and/or additional risk and are placed on the child abuse registry.

Practice guidances for child abuse assessments reviewed raised some questions for reviewers insofar as the assigned time frames. The assessment time frames of twenty days for suspected child abuse and ten days for family assessment are significantly shorter than those in many jurisdictions which often provide for between thirty and sixty days.

Iowa DHS implemented its differential response system in January of 2014. A 2016 report issued at the end of calendar year 2016 found that the system was working as intended and that outcomes overall were positive. Specifically, it noted:

- 95% of children who received a family assessment did not have a substantiated abuse report within six months.
- 98.09% of families referred to Community Care services do not experience a Child in Need of Assistance (CINA) adjudication within six months of service.
- 92.92% of families referred to Community Care services do not experience a substantiated abuse report within six months of service.
- 3,815 families were referred to Community Care.
- 1,350 of 8,857 families originally assigned to the family assessment path were re-assigned to the child abuse assessment pathway.
- Reassigned families constitute 5% of all accepted intakes for CY16. Of the families reassigned, 50.5% resulted in a confirmed or founded outcome, which indicates pathway reassignment is being utilized as designed.

Despite the outcomes stated above, however, several of those interviewed expressed concern about the use of Community Care. It was reported that referrals to Community Care are “cold”. That is, families may be referred for Community Care whether or not they have committed to be voluntarily involved in

a plan of services and there is no follow-up to determine the family's outcome. Reportedly, Community Care providers are paid \$500 per family for each referral whether or not a family actually engages in services.

Ongoing Services

When children are placed in the protective custody of DHS or families are referred for ongoing services following a child abuse assessment, they are referred to units staffed by Social Worker IIs who serve as case managers. These staff coordinate case activities and carry responsibility for ensuring the development of case plans, provision of services, and working with the courts toward final disposition. They are required to have regular in-person contact with parents and children and visits with children must occur at least monthly in the homes where they are placed. Most direct services, however, are provided by contracted staff.

C. Key Issues in Policy and Practice

Family Engagement

Although case managers are required to have monthly contacts with parents, these do not have to occur in the parents' homes. Thus, they often take place incidentally in association with parent-child visits, court hearings, or other case activities.

Interviews with youth, parents and grandparents, foster parents, and DHS case managers indicate that many believe there is insufficient focus on engaging children's parents in assessing needs related to child safety, planning interventions to address them, and evaluating progress. One long-time external partner observed that the emphasis on working with families and on reunification seems to have been lost.

Some of those interviewed expressed concern about the number of people, including contracted providers and case managers that are involved with families. They wondered whether, with multiple service providers, particularly when many of them have overwhelming workloads, families really have an opportunity to form a working alliance with anyone.

Family Teaming and Case Planning

In keeping with tenets of good child welfare practice, DHS policy does call for family team meetings and that they be held at least quarterly. However, such meetings are reportedly not held consistently. Interviewees indicated that case plans may be crafted outside of team meetings without input from the family. Some expressed concern that, even when team meetings occur, parents may not be adequately prepared for them and may not understand that they can invite extended family, friends, or other significant persons to be present. Team meetings were described in some locations as often being "too attorney driven" and without strong and expert facilitation. It was also reported that, too often, case plans are "cookie cutter" meaning that they do not appear individualized to meet family needs, but simply incorporate a standard menu of available services.

Despite reported concerns related to the quality and consistency of teaming, reviewers were told that requirements related to facilitation training and the format and timing of team meetings in FSRP contracts are quite detailed and rigorous. All facilitators must undergo a 3 day training followed by a six month period in which they work with a coach who is already an approved facilitator. The trainee must then co-facilitate with the coach, who evaluates his or her performance and makes a recommendation

for approval. There is a separate 1 day training and an additional coaching process for Youth Team Decision Making facilitators. All facilitators must be re-authorized every 2 years and complete 6 hours of training quarterly. Unless there is turnover in facilitators, families are to have the same facilitator at all team meetings.

Communication and Confidentiality

External professionals involved in making referrals to or in serving the child welfare population frequently cited problems related to their inability to communicate with DHS beyond making a report to the central intake section. Physicians, educators, and providers of community-based prevention services, all of whom are mandated reporters of suspected maltreatment, expressed frustration with their inability to communicate with DHS, particularly following their having made a report. Most indicated that they are unable to learn to whom a report has been assigned so that they can communicate additional information.

Educators and community-based prevention providers, in particular, also expressed concern about the way assessments are handled stating that they often result in parents being provided with information that allows them to conclude who made a report or the identities of those contacted as collaterals, causing them to disengage in contacts with the school or with community services even when no intervention occurs to otherwise ensure the safety of the child who was a subject of the report. Several also cited situations in which this has resulted in parents' retaliation against children as information made available to the parents made it clear that children disclosed alleged maltreatment. In these cases, children may cut off communication with teachers, counselors, or mentors whom they had previously trusted.

Youth interviewed also expressed concern about communication. Most said that they had had difficulty reaching their caseworkers and several recalled instances in which they had been unable to participate in school or extra-curricular activities because their parent's or caseworker's permission was required and they had been unable to secure it in time for the event. Both youth and resource parents also expressed frustration with being unable to get copies of needed documents, especially children's birth certificates, which are often needed, particularly by youth as they reach age 18. Apparently birth certificates that DHS obtains are stamped "for DHS use only" and cannot be used for any other purpose such as for a youth to obtain a driver's license.

It was subsequently learned that child welfare policy administrators are aware of the lack of consistent understanding of the federally recognized standards for normalcy which indicate that resource parents should be authorized to approve routine activities such as field trips associated with school for children in their home using the standards of "reasonable and prudent parenting" that apply to parents' decision making for their own children. A training is being developed and will be offered to staff in early 2018.

Concurrent Planning

DHS practice guidance endorses concurrent planning, the practice of identifying an alternative permanent plan for a child in out of home care, even while still working diligently with his or her family of origin to achieve reunification. Concurrent planning is an accepted practice in child welfare that is designed to ensure that children achieve permanent placement outside of foster care as quickly as possible. It is preferred to a sequential planning approach in which an alternative permanency resource

is sought only after reunification has been ruled out. Despite the advocacy of concurrent planning, however, several of those interviewed indicated that they had not observed it to be practiced effectively in many instances. Some informants mentioned that, in their experience, efforts to locate family and consider them as alternative permanency resources, particularly those in a child's paternal family or others who live some distance away, are inconsistent.

C. Review of Quantitative and Qualitative Data

Quantitative Data

During calendar year 2015, Iowa DHS received 46,994 reports of alleged child maltreatment of which 24,562 (48%) were accepted for assessment. In 2016, that number rose to 50,091 reports with 25,950 (49%) accepted, an increase in assessments of about 6%. During the first half of 2017, 27,463 reports were received and 16,925 (62%) accepted. If reporting and screening continues at these rates through the remainder of the year, the agency will receive 10 per cent more reports than last year and will conduct 31 per cent more assessments. This likely presents a challenge given that the number of Social Work III positions has not increased.

In 2016, of 18,481 child abuse assessments, 6,575, or almost 36 per cent, were either confirmed or founded. Of those, 4,385, were referred for formal ongoing services within DHS while, 1,806 were referred for Community Care and another 1, 268 received information and referral services to connect them with additional resources. As of the first five months of 2017, child abuse assessments have increased substantially, by 43% over last year, likely reflecting lower screen-out rates and the fact that a greater proportion of accepted reports are being referred to the child abuse assessment track than prior to policy changes made this year. The portion of those assessments that are either confirmed or founded has dropped to just over 32 per cent.

Children enter and remain in out of home care in Iowa at a rate higher than the national average. At the end of 2016, Iowa had just under 6,000 children in care, a rate of about 8.2 per 1000 children in the population, compared with a national rate of about 5.5. Entries into care each year occur at a rate of about 6 per 1000 children in the population compared with a national rate of about 3.3. This number is somewhat difficult to interpret, however, given that children entering through the juvenile justice system are also included in the population. This is not true of foster care counts in many states.

A total count of calendar year 2016 showed that 10,200 children were in out of home care for some portion of the year. Of those, 1,530 were placed through juvenile services, and 8,670 entered through child welfare services. If these figures hold true currently, they suggest that, at any one time, about 18 per cent of children in care are placed through juvenile justice.

Qualitative Data

Evaluators reviewed the statewide CFSR case review data for FY 17. For the 65 cases reviewed, in the 18 items assessed, DHS performed well in areas such as Timeliness of Investigation Initiation (85.9%) and Services to Protect Children in the home and Prevent Removal/Re-entry (91.3%). The Department was challenged in the areas of Child and Family Involvement in Case Planning (53.5%), Needs and Services of Child, Parents and Foster Parents (50.7%) and Caseworker Visits with Parents (20.6%).

D. Contracted Services

Iowa DHS has begun to use performance-based contracting in the following areas:

- Child welfare emergency services
- Foster care group care services
- Supervised apartment living
- Recruitment & retention of resource families
- Training and support of foster parents

Both DHS administrators and providers were generally positive about this new contracting approach although some providers expressed concern with its “no reject, no eject” requirement with regard to accepting and maintaining youth in placement even when they believe their program is unable to provide the needed level of care.

The most widely used contracted service for families involved in child welfare appears to be Family Safety, Risk, and Permanency (FSRP), which serves needs related to family preservation and reunification. This includes service planning with families and carries a requirement that service plans be created within the first thirty days after referral, that they be based on the family’s child abuse assessment, and that they align with the DHS case plan which must be created within sixty days. FSRP also arranges and provides supervision for parent-child visits and family interactions when children are in out of home care, provides facilitation for family team decision-making meetings, as well as other activities, interventions, and strategies necessary to achieve desired outcomes. The contract between DHS and providers of FSRP lists extensive functions that the “Care Coordinators” employed by FSRP agencies are to provide. These include help in improving family communication and relationships including parent-child interaction, services to promote family reunification, parent education, parent coaching and mentoring, assessment of parent-child interactions in visits, support and supervision to maintain child safety when children have been reunited with the families, and many more.

Contracts with providers of FSRP specify staff qualifications of a baccalaureate or master’s degree in “human services or a related field” and one year of child welfare experience or an associate’s degree in human services and four years of child welfare experience. It was learned that requirements for these staff had been lowered recently based on contractor feedback. No training requirements are stated. However, providers are required to be accredited by an appropriate national accrediting body which has its own requirements for training. Accrediting bodies also specify requirements for supervisors. Contracted providers are allowed to have their staff attend the training that is provided for DHS staff through the Iowa State University Child Welfare Training Academy if space is available.

A consistent theme in interviews conducted during this review was that FSRP staff were not well-qualified for the level of the work they were expected to do and that turnover among the Care Coordinators is high. Some voiced the opinion that the functions they performed amounted to really just monitoring and transportation, not substantive service delivery. Administrators of FSRP provider agencies, on the other hand, spoke of onerous requirements for provision of transportation that consume large amounts of time. They also indicated that staff turnover “ebbs and flows” in relationship to DHS hiring as many personnel leave positions in contracted agencies for better pay and benefits at DHS. Indeed, reviewers noted that a number of case managers included in interview groups referenced earlier experience as Care Coordinators in FSRP. Reviewers were informed that FSRP contracts in the Cedar Rapids and Des Moines service areas experience the highest staff turnover.

FSRP providers elsewhere in the state are reportedly offering some evidence-based intervention models including SafeCare, which is being offered by five of the eight FSRP providers. Some are also offering The Incredible Years and the Boys Town parenting models.

In addition to FSRP, DHS also contracts with these providers for Safety Plan Services. This service is intended to provide short-term support of in-home safety plans for children identified in a child abuse assessment as in danger. Staff are engaged for up to two 15 day periods, must meet with families within 24 hours of the initial referral, and be available to the family 24 hours a day every day to respond to any crisis. Some DHS personnel interviewed indicated that they lacked confidence that Safety Plan Services had the capacity to adequately monitor the safety of children in their own homes.

E. Service and Placement Resources

Service Array

Information about the array of resources available to serve children and families involved with DHS is limited as this review is confined to the Des Moines and Cedar Rapids service areas. Those interviewed noted that they enjoyed a wealth of resources in many areas. The most consistently cited area of need was in mental health treatment, especially insofar as in-patient services are concerned.

Those interviewed in the Des Moines area in particular pointed to a wealth of resources as a substantial strength. However, it is not known to what extent that is true in other areas of the state.

The *Parent Partners* program which provides trained and supervised parents who have already successfully experienced child welfare services, operates in all counties in Iowa. It currently employs 150 “partners” under the supervision of 18 coordinators. This model was mentioned by DHS and contracted services staff, court personnel, and parents themselves as being one of the most favorable aspects of the service array. Most indicated that it needs increased capacity.

Staff in Linn and Polk counties enjoy the support of other disciplines, including medical and law enforcement professionals, in making decisions in especially complex cases. In Polk County in particular the multidisciplinary team which DHS supports and coordinates, was cited as very beneficial. Many workers emphasized the importance of this team in the course of conducting challenging assessments.

Placement Resources

Given the number of children in out of home care in Iowa, the demands upon DHS for the provision of suitable placements is significant. Currently, DHS is making efforts to place children as close as possible to their families of origin, an effort which reviewers strongly support since keeping children in close proximity to their families greatly contributes to maintaining family connections and increases the chances of reunification.

With few exceptions, resource parents interviewed in this review stated that many needed supports were lacking, that they had great difficulty communicating with case managers, and that they did not know to whom to turn within DHS when case managers could not be reached or were not responsive to requests. Specific concerns included inability to get critical information about children being placed in their care, denials or delays of permission for children to participate in activities, to get haircuts, or routine medical care because parents must give permission, a rate of payment that makes acceptable

child care practically unavailable, long delays in receiving reimbursements, and disrespectful treatment when, as often happens, they are subjects of unwarranted maltreatment reports.

DHS staff encounter difficulty finding suitable placements from among the available families and some of those interviewed expressed the belief that there are many families who are unable or unwilling to provide the quality of care that children require. Apparently, in Iowa, there is a right to be a foster parent as some whose homes are closed file appeals that are upheld by state hearing officers. It was also reported to be common to allow variances beyond licensed capacity in resource family homes due to the shortage of placements.

DHS uses shelter care placements across the state. Most of these are licensed for older youth, but some also care for infants and young children. Shelter placement for any age child is intended to be only for very short periods of time. However, several of the youth interviewed indicated that they had been in such placements for several weeks and one for almost a year. These youngsters recalled that shelter placement is inherently anxiety producing as their own futures remain uncertain and they watch other children come and go on almost a daily basis. Because it is designed to be very short term, shelter programming does not include intervention tailored to children's individual needs. One youth stated, "No healing takes place in shelter care."

G. Courts and Legal System

Dependency courts throughout Iowa use a one family-one judge model which is considered to be good practice in that it provides continuity in oversight of a family's progress in making the changes necessary to make children safe and in moving children to stable permanent family placements outside of foster care. Reviewers were also impressed with the reported level of activity by Iowa's Children's Justice Initiative (CJ), the state's Court Improvement Program, which operates under the auspices of the state Supreme Court. CJI has 5 full-time staff (4 program and 1 financial manager). It conducts assessments of the court process and court orders in dependency and provides consultation for courts on best practices in dependency. It also manages the grants for the family treatment courts in the state, convenes the various committees and advisory councils involved in the state's child welfare system, and provides some cross training for CW and legal professionals involved in dependency cases.

Iowa has a number of specialized courts for families involved in child dependency matters. The state, through CJI, received a Community-Based Regional Partnership Grant in 2007 and initially set up 6 family treatment courts. The number has now increased to 12. The treatment court program uses the Strengthening Families model which provides families of children 3-5 years old and 6-11 years old with 14 weeks of treatment. A pilot site has been established for parents with children 0-3. Treatment also includes recovery support which involves both professional and peer support. Treatment Courts use the UNCOPE substance abuse assessment.

County attorneys present dependency cases on behalf of the state in Iowa and serve to unofficially represent DHS. In some particularly complex cases and in all appeals of terminations of parental rights, DHS is represented by attorneys from the state Attorney General's office. Both children and parents are represented by legal counsel. Parents, if indigent, are represented either by the public defender or by private appointed counsel.

Reviewers were able to talk with court personnel in both Polk and Linn counties. In Linn, parents who are indigent are usually represented by attorneys with the public defender's office. Attorneys who represent children are contracted. In Polk County, the court appoints private counsel for parents from a list of attorneys who have registered with the court. Judges are required to select attorneys at random. Attorneys are required to have three hours of specialized training per year to retain their eligibility to represent parents. Children's attorneys are provided by either the Juvenile Public Defender, Youth Law Center, or the Drake University Children's Law Clinic.

In Polk County the juvenile bureau within the Office of the County Attorney is reported to be staffed with seasoned attorneys with a commitment to juvenile law. This is also true of the bench, which has dedicated juvenile judges with several of the current six having substantial experience in juvenile law.

Agency-court relationships in both Linn and Polk counties appeared to be reasonably positive. Differences across sections of court sometimes challenge DHS, contracted providers, and resource parents, and workloads are viewed as a factor that sometimes keeps DHS from producing needed documentation such as reports or social summaries on time. However, the relationship with the County Attorney's office helps ensure that interactions with the court run smoothly for the most part.

Some parents, youth, and resource families who were interviewed indicated that they had been visited by their attorneys or had had interactions with them outside of court. This was not, however, the norm. Two foster mothers, each with greater than 25 years' experience and having cared for dozens of children, indicated that they had, respectively, experienced two visits and one visit by attorneys with children placed in their homes.

H. Client Advocates and Service Recipients

Parents and Grandparents

Parents, grandparents, and client advocate groups interviewed appreciated the use of Parent Partners. They also acknowledged that some services to which they were referred by DHS addressed needs in their families. However, they consistently voiced mistrust of DHS and the courts.

Specific issues raised had to do with the belief that actions to remove children from families were monetarily driven based on federal funding streams which provide monies for out of home care rather than support of in-home services to families, that reasonable efforts to prevent removals are not consistently made or required, and that relatives are not properly evaluated as placement resources.

Families also expressed concern that service providers were not sufficiently qualified based on education and licensure to offer services to address identified needs. They feel that there is insufficient accountability and that there are no mechanisms in place to ensure that the services they receive, ostensibly to help them address deficiencies identified by DHS and the courts, are effective and in sufficient supply.

Youth and Youth Advocates

Iowa has an active and well-supported organizational structure for its older youth and recent alumni of foster care. There are 15 youth councils statewide; councils provide input into agency policy and legislation. About 45 youngsters each year are able to attend a one week summer camp that teaches leadership skills.

Although Iowa does not allow youth, with the exception of those having significant developmental needs, to remain in foster care status until age 21, DHS does support an aftercare program which provides some case management, educational supports, and a stipend of up to \$600 per month which may be adjusted downward if other resources are available to the youth. Youth may enter the aftercare program voluntarily when they become 18 years of age. Eligibility ends at age 21 but a youth may retain eligibility for scholarships and medical assistance.

Youth who were interviewed in this review were appreciative of the aftercare supports offered. Many also felt, however, that they could benefit from more mentoring and from the opportunity to receive aftercare case management until age 24. They point out that, given the chaotic backgrounds and educational delays that are characteristics of youth who have experienced foster care, many are not really ready to function independently even at age 21.

IV. Discussion

This section of the report examines the findings detailed in section III above in light of critical aspects of child welfare system organization, administration, and functioning.

A. Organizational Structure and Capacity

Structure

Reviewers have some concern about the placement of child welfare within the array of responsibilities assigned to DHS. As previously stated, DHS has a wide range of responsibilities. These are all critically important public services and deserving of conscientious and efficient administration. However, child welfare differs greatly from the more regulatory functions associated with public assistance, child support enforcement, and medical assistance. Even adult protective services, which may be most akin to child welfare in that it involves assessing the care and treatment of vulnerable individuals, differs significantly in terms of the clinical knowledge and skill needed for competent assessment, the need for long range planning, and the legal and practice pathways of disposition and resolution that are available.

As stated above, reviewers' impressions of the knowledge and performance of staff in the DHS child welfare policy section is generally positive. However, the degree to which the policies and initiatives they design are actually implemented in a system in which administration and management is layered with responsibilities for multiple programs and in which mid-level managers may or may not have child welfare experience or formal social work training is questionable. Such a structure seems to invite the adoption of practices based more on system efficiencies than on the values and knowledge base of professional social work and what is known about the underlying causes and effective treatment of child maltreatment.

Assessing the often multiple and complex needs of families and children who present to child welfare systems requires substantial clinical knowledge and skill in gathering and interpreting information, applying intervention, and determining the sufficiency of change related to child safety. This is often a challenge for front-line caseworkers in today's child welfare agencies and calls for them to have substantial expert support in the ranks of supervision and management. If that is absent, even long experience may serve only to ingrain practices that do not lead to accurate and complete assessment as a basis for sound decision making about the safety needs of children.

Data

The data system currently in use for intake and child protection functions of DHS appears to be working well. It is reportedly both current and accessible for administrators and managers. The older system on which DHS must rely for ongoing services, including those pertaining to children in out of home care, is out of date and difficult to use. Indeed, the information that reviewers received from that system was in a format that would make it daunting for analysis and interpretation on a frequent basis.

Forward-thinking child welfare professionals of today are teaching staff to use data to assess their performance, identify areas of practice needing attention, and actively monitor key metrics as they adjust efforts toward improving child and family outcomes. This cannot be accomplished with the kind of data base now in use for ongoing services in Iowa DHS. Further, the lack of timely access to outcome data may contribute to the concerns noted in A. above regarding the extent to which policies and initiatives designed by child welfare administrators are actually implemented as intended since that cannot be readily gauged with the existing system.

B. Policy

This preliminary review did not involve a complete analysis of current policy in DHS, but rather of intake policies and practice guidances to be applied in child abuse and family assessments. In terms of intake, it appears that state law and its interpretation, particularly as it pertains to the definition of a person responsible for the care of a child, the variable which most distinguishes maltreatment concerns that are directed to the child protection agency rather than to law enforcement alone, is exceptionally broad. (For purposes of comparison, details of state child abuse reporting laws current as of 2016, may be accessed at <https://www.childwelfare.gov/pubPDFs/define.pdf>.) Additionally, since the two index cases which precipitated this review, DHS has changed its intake screening procedures with the result that the percentage of reports accepted has risen from about 50 percent to about 65 per cent. This has occurred during a period of increased reporting as well as a shift in policy which assigns more investigations to the child abuse assessment track rather than to the less rigorous family assessment track. Child abuse assessments carry demands for response times that may be as little as one hour and are in most cases within 24 hours.

These policy measures, the broadening of intake and the lowering of screen-out rates, are familiar; they follow a pattern often taken by states in the wake of child fatalities or other high profile cases in well intentioned attempts to ensure children's safety. They have, however, in the reviewers' experience, seldom if ever had the intended effect. Such actions can, in fact, serve to place more children at risk by adding to workload requirements that are frequently already overwhelming and broadening the scope of intervention far beyond the expertise or experience of child welfare personnel.

One fact that is frequently lost in child welfare reform efforts is that child protection intervention can, if too broadly targeted or poorly executed, cause great harm, inflicting trauma on children and families that has far worse effects than the maltreatment it is intended to prevent in all except the minority of particularly egregious incidents. Indeed, a number of mandated reporters interviewed during the course of this review, expressed just that fear, citing instances in which they believed their reports or those of their colleagues, given the way that they were acted upon, may have caused parents to retaliate against

children and other family members or to disengage from association with individuals or organizations that had provided a safety net for the children in question. Even when that does not occur, it can be assumed that unwarranted intrusion into the lives of families serves to invoke considerable stress and anxiety for children as well as for their parents. If such harm is to be avoided, the conditions that call for child welfare intervention must be carefully considered. Demands placed upon child welfare systems must be aligned with agency resources in terms of workload, the knowledge, skill, and oversight of personnel, and the interdisciplinary resources at their disposal in making critical decisions.

Further, child welfare intervention should not be viewed as a substitute for universally available basic health, mental health, and supportive community services that can help families, especially those in poverty, to voluntarily access resources needed by themselves and their children that may keep their needs from escalating to the point that they result in a report of abuse or neglect. Parents are often understandably defensive when they become the subjects of child welfare intervention and thus not as readily open to intervention as they might be had they had an opportunity to access services voluntarily. Child abuse and neglect intervention is also much more costly than many lower level community-based preventive services.

Of further concern in the area of policy are the relatively short times frames provided for completion of assessments. Although it may be possible for many, or even most, child abuse and family assessments to be completed within the twenty and ten days that are, respectively, provided, these times are considerably shorter than those seen in other states with which the reviewers are familiar, which more normally allow at least thirty days for both and, in some instances, an additional 30 days for completion of documentation before cases are considered out of compliance. There is certainly a need for assessments to be completed as soon as possible in order to ensure that appropriate child safety steps are taken and to provide families with closure. However, the very brief time frames in Iowa appear to leave little margin for workload management or to allow for additional information gathering in situations in which it is indicated. Child maltreatment assessments should include, at a minimum, all of the following:

- Review of historical information when families have had prior involvement with child welfare;
- Interviews with and/or observations of children who are alleged to be victims of maltreatment;
- Interviews with alleged perpetrators and with other parents or caregivers;
- Interviews with other children in the household;
- Interviews with other adults in the household;
- Interviews with collaterals (e.g., medical professionals, teachers, counselors, relatives, neighbors) who are in a position to have knowledge of the care and treatment of the child in question and of the alleged maltreatment;
- Documentation of information, when available and relevant, of the child's medical and developmental status;
- Documentation, when available and relevant, of information pertaining to the health or mental health status of parents/caregivers and to criminal histories; and
- Supervisory consultations to review evidence and decision making.

In addition to the above activities, it is sometimes necessary to await reports of medical or psychological testing and/or to secure multidisciplinary consultation. Consistent completion and documentation of all

of the above activities in an environment which also requires responding to multiple new reports within the ten and twenty day times as they are assigned would appear to be challenging indeed.

Finally, the existence of a one-hour response time in the case of reports in which the perpetrator is said to have uncontrolled access to the alleged child victim raises some questions for reviewers. It is true that some reports do call for immediate response. Typically, however, this need is determined individually based on the facts of the report and tends, in the experience of reviewers, to occur most often in cases in which immediate action provides an opportunity for the child welfare caseworker to secure critical information from people who are available at the scene and to participate in making a plan for protecting the child during the investigation. Examples of such situations are those in which law enforcement is present at a scene which poses a threat to children or when a child presents at a medical facility, such as a hospital emergency room, with signs of maltreatment. While indicated in such limited situations, responding in such a short time frame may also unnecessarily jeopardize the outcome of an investigation. Certainly, it would almost always rule out the possibility of a caseworker's having an opportunity to review relevant case history that might well inform the investigation. Secondly, it precludes the development of a thoughtful investigative plan. In many instances, for example, the best place for an initial interview with an alleged child victim may be away from the child's home and the alleged perpetrator, but a one hour response requirement may not allow time to wait to see a child at school or day care. Such a requirement may also interfere with important time-sensitive work being done on other assessments. A total of 1205 one-hour response times were assigned during 2016. Although, this is a small percentage of the total assessments performed by DHS, it might be useful to explore to what extent they were warranted in terms of investigation findings and safety outcomes for the children involved.

C. The Child Welfare Workforce and Workload

This review raised several questions about the capacity of the child welfare workforce and its workload. Given that personnel are not required to have any formal social work education upon entry, a lot is expected of both trainers and supervisors within DHS if they are to produce competent practitioners. Reviewers did have an opportunity to review the list of training topics provided to new staff but have no knowledge at this point of the content associated with them. Thus the following questions remain concerning training:

- To what extent does training in identifying child maltreatment include typologies of abuse and neglect and detailed information in assessing child vulnerability based on factors other than age? For example, do all staff understand that a child's status as an adoptee, especially if adopted from the child welfare system, constitutes an indicator of special vulnerability? Can personnel accurately distinguish between various types of neglect and caregiver behaviors that constitute neglect as opposed to the intentional maltreatment associated with more egregious forms of abuse? Are any demonstrated subject content experts, as identified by the university or by national child welfare organizations, involved in reviewing curricula and mandated course offerings?
- How skilled and knowledgeable are trainers? What clinical knowledge do they have? Is suitability as a trainer based on experience alone or are there other factors?

- Reviewers were pleased to note that training includes six hours in motivational interviewing. While this is insufficient to gain proficiency, it can provide staff with an understanding of the techniques, principles, and the value of this evidence-based approach in overcoming resistance and building a positive working relationship. It is not known, however, to what extent contracted personnel, who have the most intense contact with families, are provided with such training or what other professional development opportunities they are offered.

Reviewers noted that training for new case managers contains a course on social work ethics. However, the fact that there is no requirement for formal social work education, no incentive for recruiting from baccalaureate social work programs, and no continuing social work education support for existing staff coupled with the fact that mid-level managers may be those with experience in other fields, raises concerns on the part of reviewers about the extent to which these principles are really incorporated and applied in work with children and families. Iowa is certainly not alone in its lack of commitment to hiring front-line staff with social work education. This trend dates back to the “de-professionalization” of child welfare that began following the passage of the Child Abuse Prevention and Treatment Act in 1974 and the ensuing avalanche of child maltreatment reports that caused states to lessen their qualifications for child welfare staff in order to hire them in sufficient numbers. Many states do, however, maintain at least a strong preference for professional education, insist on it for staff in certain key positions such as supervision, administration, or training, and use the federal funding available through Title IV-E to create opportunities to add to the number of staff with social work degrees.

It appears that, at least in the two major urban areas in which this review was focused and very likely in other parts of the state as well, workload is an area of immediate and rather critical concern. Caseloads appear to already be very high in the midst of a trend of increased reporting and less stringent screening that could cause them to go even higher.

D. Practice

Family Engagement

This review revealed concerns about the extent to which practice is focused on the engagement of children’s parents and other caregivers. It is not unusual to identify this as a need in the functioning of child welfare systems in the current time. Federal requirements for tracking contacts with children, the level of skill needed to engage adults who are involuntarily involved in services, and the time it requires of caseworkers who are frequently overwhelmed with documentation and compliance requirements, make the difficult task of forming a true working alliance with parents beyond the capacity of the frontline workforce in many instances. It is, however, a fundamental truth in child welfare that, while agencies do have a responsibility to monitor the safety and well-being of children in their care, the real work of achieving safety and permanency for children is in helping their parents or other potential permanent caregivers to make the changes necessary to enable them to nurture their children and keep them safe. With few exceptions, children do not enter out of home care, or come to the attention of child welfare at all, based on their own behavior but on that of their parents and it is their parents who must be the subject of efforts of support and treatment.

Many, if not most, parents who become the subjects of child welfare intervention are themselves the victims of trauma with troubled histories that include prior negative encounters with service agencies that leave them fearful and mistrustful. It can indeed be a challenge to engage such parents. There is,

however, a substantial body of research that shows that such engagement can be achieved and that many parents can be helped to make the changes necessary to enable them to remain with or be reunited with their children. Iowa's own development of the *Parent Partner* model is evidence that this can occur and that child welfare staff in Iowa have helped make it happen.

Family Teaming and Case Planning

It is encouraging that Iowa has invested substantially in a process to develop skilled facilitators and that policy calls for family team meetings to be held at least once each quarter. Team meetings, when families are properly prepared and meetings are well planned and facilitated, have been demonstrated to provide a foundation for the kind of strong assessment and planning that leads to good outcomes. It appears, however, that despite the efforts of child welfare policy staff to develop contracts and policy that ensure good teaming practice, this may not be occurring in many instances.

Communication and Confidentiality

A number of those interviewed in the course of this review cited instances in which lack of complete or timely communication, including access to case managers, or interpretation of confidentiality had resulted in individuals lacking critically needed information or in their receiving authorizations for needed services or activities in a timely way. Such problems are not uncommon in large child welfare agencies as they seek to avoid risk and protect information. However, when staff are not sufficiently well versed in the intent of such policies or do not understand how to secure reasonable waivers, they can result in denial of needed services and also have the effect of frustrating and angering service recipients and agency partners such as resource parents. Further, reviewers suspect that in many of the cases cited, case manager workload, was a factor preventing timely access and response to information and policy clearances.

E. Contracted Services

Iowa DHS appears to have gone to great effort to create adequate casework supports through the use of contracted providers. This is a practice common in child welfare systems across the United States as state and county governments seek to limit the numbers of public employees without compromising needed public services. Further, private organizations can, in some instances achieve a degree of flexibility and tailoring of performance to meet local needs that can be difficult to achieve in public systems. In the two service areas in which this preliminary review concentrated, however, it appears that the quality and consistency of services, especially those offered through FSRP, is questionable.

The qualifications of staff, in accordance with the contracts reviewed, do not seem commensurate with the expectations outlined, particularly if they are not provided with very intense and expert supervision. They may be, but that was not clear from the information made available to reviewers and did not seem to be the case based on concerns almost uniformly expressed by those interviewed both within and outside of DHS and other formal system partners such as the legal system.

V. Recommendations

Recommendations are divided into two sections, those based on the information gathered in the limited, targeted review just concluded and recommendations for follow up in a potential second phase of the review which would be conducted in 2018.

These recommendations are derived from the findings outlined in section III of this report and the discussion in section IV. They are separated into two tiers, those that can be undertaken immediately and those that call for further inquiry during a second phase of assessment.

Tier I:

Recommendation #1: Provide accurate information on actual caseloads of case carrying personnel in all internal and external reports.

Exclude non-case carrying staff from calculations of caseloads in reports that are provided to the legislature and publicly. Provide county-specific counts and ranges of caseloads across counties. Caseloads should also be depicted in terms of children and families, by case type, and against the recommendations of national bodies such as the Child Welfare League of America, the Council on Accreditation, and the composite of workload analyses conducted of multiple systems by the Children's Research Center of the National Council on Crime and Delinquency and contained in the appendix to this report.

Recommendation #2: Institute competency-based learning that ensures staff have developed the skill expected to be acquired from training and ensure that ongoing training is based on individual staff needs as determined in their performance assessments.

Professional development should incorporate planned, purposeful assessments of transfer of learning through observation of staff in actually performing work that incorporates the knowledge and skills taught in class-based or online training.

Recommendation # 3: Strengthen requirements for providing services to parents.

This should involve a multilevel effort to include the following:

- Review requirements for having face-to-face contacts with parents and other caregivers and for coordination between case managers and FSRP personnel to ensure that there is appropriate emphasis on having immediate, frequent, and purposeful contacts with parents, particularly parents of children in out of home care, to develop and implement a plan to achieve reunification or other timely permanency outside of foster care. Strongly consider requiring regular face-to-face contact with parents in their places of residence.
- Ensure that case managers and FSRP staff coordinate their efforts and those of support personnel in a way that is directed to provide a primary point of engagement for parents. In association with that effort, review training content to examine the degree to which case managers and FRSP staff receive training in appropriate skills such as solution focused approaches and motivational interviewing.
- Review the process for case planning with families and the consistency with which team meetings are held and take steps to ensure that families and their self-identified support systems are uniformly involved in case planning. This review should also examine the quality of facilitation and current practices for allowing participation in family team meetings with priority given to ensuring that the setting of the meeting encourages full family participation rather than only that of professionals.

Recommendation #4: Develop a means of securing and providing important case and legal documents to youth when they exit formal foster care if not before.

Recommendation #5: Ensure that legal and policy requirements related to confidentiality are clear and uniformly interpreted and understood by staff at all levels.

Examine legal and policy requirements related to communication and confidentiality and explore how well understood these are by frontline staff. Identify what processes are in place for service recipients, resource parents, and mandated reporters to make inquiries about decisions or case actions and ensure that they are frequently communicated. Ensure that all information that resource parents legitimately need to provide both physical and emotional care for children placed with them is communicated to resource families at placement or as quickly thereafter as it is obtained.

Recommendation #6: Review processes currently in place for communicating with mandated reporters concerning assignment and outcomes of assessments of their reports.

This review should determine whether the intake unit is consistently able to direct mandated reporters to the CPS staff assigned to their investigations and to provide them with timely information concerning the outcome of the assessment.

Recommendation #7: DHS leaders should explore, as quickly as possible, avenues to secure funding necessary to improve its data system for ongoing services.

The antiquated state of the current data system compromises communication between DHS and contracted services providers, prohibits effective and efficient use of data, and has the potential to negatively impact children and families by making it difficult, if not impossible for front-line staff and managers to regularly assess and adjust practice to improve outcomes related to safety and permanency.

Recommendation #8: Form a workgroup to research other states' legal definition of caregiver and the way in which concerns related to maltreatment of children by those not meeting the legal definition are handled.

Such a work group should ideally include, at a minimum, child welfare policy administrators within DHS, legislative staff, and representatives of law enforcement. The group's work should conclude with a report and recommendations, if any, for policy changes in Iowa with regard to the legal definition of a caregiver.

Recommendation #9: Form a work group to review the current time frames for response and completion of child abuse and family assessments in other states with similar populations and determine whether those currently in place are optimal in terms of their promotion of safety for children and demands placed upon child welfare and law enforcement.

Such a review should involve a sample case review of closed assessments to determine the extent to which they were done thoroughly in accordance with the key activities listed on page 21 of this report and of cases requiring a one-hour response to consider in what way it influenced the course of the assessment and its safety outcomes.

Recommendation #10: DHS should identify and resolve barriers to extending the current centralized intake system to 24 hour coverage.

The existing system of receiving after hours reports through operators at the state training school allows for disparity in the quality of intake of reports. Reporters and the information they receive should be considered equally regardless of the time during which their report is made.

Recommendation #11: DHS should immediately begin to work with state universities offering baccalaureate and graduate social work programs to develop undergraduate and graduate internships and stipends for social work students and to provide continuing opportunities for employees, particularly those in supervisory or training positions, to pursue the masters of social work degree.

Direction in maximizing opportunities available for social work education funding under federal title IV-E should be sought from the regional office of the Administration for Children and Families.

Tier 2:

The following recommendations would be further explicated during the second phase of assessment.

Recommendation #1: Work with DHS human resources to consider whether the current pay structure for front line staff is optimal in terms of promoting work-life balance, rewarding personnel who remain in direct service positions even as they develop greater expertise, and provide for incentives for those who are well-suited for supervision to move into that role.

Recommendation #2: Work with human resources, state universities, and federal regional ACYF representatives to explore development of resources to provide content experts to review training curricula and modules. Review and development of training should consider especially the following:

- Content related to typologies of child neglect and abuse;
- Factors related to child vulnerability beyond age or diagnosed developmental disability;
- Caseworker behaviors associated with engagement of parents and caregivers;
- Behaviorally based case planning; and
- Matching of services to needs based on the extant research.

Recommendation #3: Examine workload and advocate for staff allocations and/or limitations on scope of responsibility that allow for comportment of staffing with extant workload studies of similar positions and Child Welfare League of America standards. Develop a means of monitoring deviations from expected workloads in local offices and providing support in the timely filling of vacancies.

Recommendation #4: Work with the Children's Justice Initiative and other legal partners to develop a structure of accountability for attorneys representing children and parents in dependency proceedings, especially those of the private bar, to provide them with both the level of support and of oversight needed to ensure legal representation for children and parents that comports as closely as possible with the standards of the American Bar Association.

Recommendation #5: Undertake a systematic review of the quality and effectiveness of FSRP services to include a sample quality service review conducted by the Child Welfare Group and develop a model for ongoing assessment of service quality.

Although current contracting requirements for FSRP appear to be detailed, the reports received from informants in the Des Moines and Cedar Rapids service areas consistently expressed concern regarding the quality of these contracted services. Given that these are the personnel who spend perhaps the most time with children and families, it is critically important to understand whether they have the capacity and are, in fact, providing the level of service expected to lead to positive outcomes for children and families.

Recommendation # 6: Child Welfare Group would observe a sample of family team meetings to identify opportunities for improvement.

Recommendation # 7: Child Welfare Group staff would review and observe training modules in family interaction, confidentiality, assessment, and the basic training for both intake and child protection staff.

Recommendation # 8: Review policies, practice and procedures around screening, training, and supporting foster and adoptive parents

VI. Concluding Remarks

The Department of Human Services is to be commended for inviting an external review of system functioning. State and local DHS staff have been forthcoming about the challenges they face and persistent in their efforts to address barriers to positive outcomes for children and their families.

There seems to be little question that having to do more with less where mandates and resources are concerned is having a negative impact on staff morale at least in the two service areas on which this assessment was focused and, in the opinion of reviewers, on system performance as well. Within that constraint, reviewers believe that the Department has a foundation of assets on which to build that can help sustain it while it looks toward the additional resources that it needs. These assets include a spirit of hopefulness about the new agency leadership, a seasoned and dedicated work force, and committed community partners and families that will respond to genuine partnerships with the Department. It is hoped that this initial appraisal contributes to promising improvements in the Department's operations and new opportunities to address the considerable challenges it now faces.

APPENDIX A
Workforce and Workload References



CWLA Progress Update to Governor Patrick and Secretary Polanowicz

March 13, 2014

At the request of Governor Patrick and Secretary Polanowicz, CWLA is submitting a Progress Update, which includes a summary of activities completed to date by the CWLA Team, and preliminary guidance that has been provided to both the Governor's staff and EOHHS staff. This update does not provide findings or recommendations relative to Jeremiah Oliver, as the CWLA Team has not yet completed its comprehensive review of the case. The final CWLA report will contain an account of the case, and thorough findings and recommendations pertaining to DCF case practice, relevant policy, and systemic issues. It is anticipated that a final report will be submitted to EOHHS by mid-May.

The initial phases of this review have included fact-finding to identify concerns, as expressed by leaders within DCF, the executive branch, and the legislature. As a result of this process, EOHHS has asked CWLA to broaden the scope of its review.

Initial Scope of Work

In January of 2014, the Massachusetts Executive Office of Health and Human Services (EOHHS) sought the assistance of the Child Welfare League of America (CWLA) in response to concerns regarding the safety of children served by the Department of Children and Families (DCF). EOHHS requested an objective third-party quality improvement review to examine the appropriateness, comprehensiveness, and consistency of certain agency policies and practices with nationally recognized best practices. Areas to be addressed included a review and analysis of:

- Relevant reports and related recommendations regarding Jeremiah Oliver, reported missing in December 2013;
- DCF's Critical Incident Unit (CIU) investigation regarding Jeremiah Oliver and his family;
- DCF's home visitation policies and practices;
- The assessment methodology used to conduct the Tier Review Process including a review of practices related to young parents;

children of parents with a history of substance abuse, domestic violence, mental health or unresolved trauma; and, substance exposed newborns;

- DCF practices related to 51A reports including staff training and screening criteria;
- DCF intake and case assignment practices.

Additions to Scope of Work

- Technology
- Staffing in North Central
- Medical screens
- Criminal Offender Record Information (CORI); Background checks
- Quality Improvement/case review process
- Caseload and Workload
- Case Practice and Policy/ Case Practice Model (ICPM)
- Staff Qualifications, Training and Supervision

CWLA Team's Activities to Date

The CWLA Team has initiated or completed the following activities between January 15 and March 3, 2014:

- Met with the Secretary of EOHHS and appropriate staff
- Met with DCF Commissioner and senior DCF leadership
- Met with Governor Patrick and senior staff
- Conducted individual interviews with DCF senior leadership and other designated staff
- Received orientation to current FamilyNet and iFamilyNet data system
- Completed face-to-face interviews with all current DCF personnel who had direct involvement in the Oliver case. (Interviews were not conducted with those staff whose employment with DCF had been terminated.)
- Reviewed records relevant to the Oliver family
- Attended Public Hearing conducted by the House Post Audit and Oversight Committee and Committee on Children, Families and Persons with Disabilities on January 23, 2014
- Attended Governor's Press Conference on January 27, 2014

- Facilitated a focus group with representatives of the following state agencies, programs, and initiatives:
 - Children’s Behavioral Health Initiative
 - Department of Early Education and Care
 - Department of Mental Health
 - Department of Public Health
 - DPH - Family Health and Nutrition
 - DPH - Substance Abuse Services
 - DPH - Community Health and Prevention
 - Department of Transitional Assistance
 - Department of Veterans’ Services
 - Department of Youth Services
 - Executive Office of Education
 - Interagency Council on Housing and Homelessness
 - Mass Health
- Began interviews with external stakeholders
- Met with the Office of the Child Advocate staff
- Reviewed the March 28, 2007, Massachusetts Legislative Report issued by the House Committee on Child Abuse and Neglect
- Had five meetings with Senators, Representatives, and legislative staff members
- Reviewed examples of monthly reports issued by DCF, including:
 - Caseloads (investigations/assessments, and home visit reports specific to the North Central Office)
 - Statewide home visits reports
 - Statewide twelve month weighted caseload summaries
 - Statewide monthly caseload/weighted summaries
 - Statewide monthly supervisor monitoring report
 - Statewide screening, supported and closing rates report
 - Statewide twelve month summary of completed investigations
 - Statewide social worker workload report and number of social workers with more that 22 cases for one reporting month
 - Statewide reports of child abuse and neglect-twelve month summary
 - Statewide initial assessments-twelve month summary
 - Statewide case management cases-twelve month summary
 - Statewide twelve month weighted caseload summary
 - Statewide adoption report-twelve month summary
 - Statewide family resource FTE needed
 - Statewide family resource total number of licensed homes summary
 - Statewide summary of total number of active, licensed family resource homes
 - Statewide summary of total number of ICPC homes

- Reviewed the Memorandum of Understanding (MOU) between Service Employees International Union (SEIU) and DCF regarding caseloads and caseload weighting
- Reviewed job descriptions, including educational and experience requirements, for the following DCF positions:
 - Director of Areas
 - Area Clinical Manager
 - Area Program Manager
 - Social Worker C, D, and E
 - Social Worker A & B
- CWLA staff have initiated research/data collection concerning:
 - Technology
 - Medical services for children entering care
 - Background checks conducted in other states on foster parents/kinship applicants and caregivers
 - Social work and other licensing requirements for child welfare staff in other states
- Began review of DCF policies and procedures
- Reviewed DCF draft bills from Senate and House concerning background checks and made suggestions for scope and content.

Observations/Preliminary Guidance and Recommendations

The CWLA Team has interim guidance and recommendations regarding the following issues and concerns:

STAFFING IN THE DCF NORTH CENTRAL AREA OFFICE

Following a review of the workloads/caseloads in the North Central Office, as well as a review of the “North Central Office Relief Plan,” the CWLA team facilitated a conference call with the DCF Commissioner and members of her staff, and representatives from EOHHS. The CWLA Team shared its belief that while the presence of two investigators who volunteered to assist the North Central Area Office was extremely helpful, additional personnel were needed in a more expedited fashion than was presented in the Relief Plan. The caseload numbers, and therefore the workload, was growing daily, making it extremely difficult for staff to complete their required tasks.

The CWLA Team recommended an immediate infusion of support for the North Central Area Office. The Commissioner and her staff took immediate action on the recommendations.

WORKFORCE/CASELOAD/WORKLOAD

While nation-leading policies are essential to meeting the safety and service needs of children served by DCF, the workforce is the primary means through which DCF discharges its mandate for the protection of children. It is, therefore, critical that the child welfare workforce be comprised of sufficient, diverse, well-trained, and highly competent individuals who are committed to high quality service, and have the tools, resources and supports they need to perform their roles effectively (CWLA, 2013).

Over the last 30 years, the literature has repeatedly documented the challenges that agencies face in establishing and maintaining a stable, skilled, and well-supported workforce. National estimates have found that average tenure for child welfare workers is less than two years, and turnover rates for child welfare organizations average between 20 and 40% (USGAO, 2003). According to a 2003 U.S. General Accounting Office report, the primary reasons that workers left child welfare included low salaries, worker safety, staff shortages, high caseloads, administrative burden, inadequate training, and poor supervision.

Further, research indicates that there is a critical relationship between workforce stability and the overall functioning of the agency (NCCD, 2006). In fact, the US Children's Bureau found that agencies with turnover rates above 15% also had rates of child re-abuse that were 125% higher than states with lower turnover rates. Lower turnover was associated with lower rates of re-abuse and less disruption in case management activities including completion of case plans, timely completion of required duties, and regular contact with children and families. In one study of 19 public child welfare agencies, those considered high performing based on these and related measures tended to have the lowest turnover rates. They also provided significantly more training for new caseworkers, required less on call time or overtime, and paid higher salaries than their lower functioning counterparts.

Caseload/Workload Guidance

The **recommended caseload standards for child protective services** (CWLA, 2003) are as follows:

| Service/ Caseload Type | CWLA Recommended Caseload/ Workload |
|--------------------------------------|--|
| Initial Assessment/ Investigation | 12 active cases per month, per 1 social worker |
| Ongoing Cases | 17 active families per 1 social worker and no more than 1 new case assigned for every six open cases |

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| | |
|---|--|
| Combined Assessment/ Investigation and Ongoing Cases | 10 active on-going cases and 4 active investigations per 1 social worker |
| Supervision | 1 supervisor per 5 social workers |

It should be noted that the caseload is based on new and active cases per month. In other words, new cases should not be added in a new month unless a comparable number of cases have been closed, assuming that the worker has a full caseload.

The **recommended caseload standards for family foster care services** are as follows:

| Service/ Caseload Type | CWLA Recommended Caseload/ Workload |
|-------------------------------|--|
| Foster Family Care | 12-15 children per 1 social worker |
| Supervision | 1 supervision per 5 social workers |

Calculating Workloads

Although CWLA recommends caseload ratios for each area of child welfare practice, workloads are best determined through an analysis of the agency's policy mandates and careful time studies based on activities required to complete a specific set of tasks or units of work. For those agencies interested in developing their own specific workload figures, time required to conduct the following tasks should be calculated:

- direct case work contact with children and families;
- collateral visits, service referral and outreach activities;
- legal consultation, report preparation, and court hearings;
- emergencies that interrupt regular work schedules;
- supervision, case planning and review, case consultation, and collaboration;
- work with community groups;
- attendance at staff meetings;
- staff development, and professional conferences;
- administrative functions;
- travel;
- telephone contacts, e-mail communications, reading of records, case recording or computer entry, and reports of conferences and consultations; and
- annual leave including vacation, sick time, and personal leave.

Caseloads should be computed separately for each worker category

When computing any category of workers, staff that may play a role in service delivery but are not performing the specific functions of this category, should not

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be included in the worker count. Though helpful, case aides, supervisors, and others who may assist with cases, do not perform the same functions, and including them provides a misleading caseload count.

Caseload Management

Referral trends and caseload demands may vary from area office to area office and from time to time. As such, the agency should have sufficient capacity to respond to changing caseload demands. The process of ensuring that caseloads remain manageable across area offices requires proactive strategies to fill positions and minimize the number of case worker and supervisory vacancies. It is also critical that the department closely manage the assignment of those positions across local offices.

DCF should ensure that its process for reviewing caseload trends, filling vacancies, and adjusting office specific staff allocations is based on up-to-date information regarding caseload size, and trends in intake and case closure. The agency should also ensure that procedures for adjusting the allocation of staff to area offices are responsive to both short and long-term shifts in staffing needs.

Case transfers and changes in case status should receive careful consideration. Caseload counts should accrue to the worker, not to the case. Multiple workers may address the practice needs of a family and its children in a given period. Whenever cases transfer from one worker to another within a specified period, they should be counted on each worker's caseload. The fact that this is a *single* case does not negate the need to count it as part of *each* worker's caseload. The same principle applies to changes in case status.

Leadership

Achieving the mandate of the public child welfare organization requires highly skilled, consistent, and committed leadership who are equipped to direct the agency, and engage partners and communities who can together work to assure the safety and well-being of children. Yet, it has been estimated that half the nation's public child welfare leaders will turnover in two to 2 ½ years. Experience has shown, that in many instances the lack of consistent leadership, and the challenges of leadership transition may further compromise the challenges facing the agency.

According to the National Conference of State Legislatures, it is important to ensure that the internal and external leaders maintain a focus on achieving substantive reforms over the long-term, and on bringing increased stability to leadership and improved outcomes for children and families (NCSL, 2008).

CWLA recommends that it should be EOHHS's priority to complete the current assessment of DCF, and to plan for implementation of recommendations that are specifically responsive to needed improvements in agency practice, policy, and overall operations. While this study is pending, stability is wise.

TECHNOLOGY

In response to Governor Patrick's priority of developing capacity for access to real-time data, and EOHHS's request for information about successful data programs and tools, the CWLA Team has begun to research the handheld devices used by other jurisdictions and their respective capacity to enter and receive real-time data. The CWLA Team continues to gather information from states and counties across the country concerning the devices being used (smart phones, tablets, and laptop computers), the challenges involved, the devices and platforms that bring the most satisfactory results, and staff's ability to enter and access real-time data for such tasks as home visitation, collateral contacts visits/communication, identification of children, etc.

DCF staff currently use personal cell phones to communicate from the field and to respond to overnight and weekend emergencies while on-call. There are some laptops available for use from the field. Many workers use their home computers to complete work and reports. At present, the Massachusetts Statewide Automated Child Welfare Information System (SACWIS) does not accommodate real-time access from handheld devices.

The CWLA Team confirmed that representatives from EOHHS and DCF participate in the National Center on Child Welfare, Data and Technology, and recommends that Massachusetts take full advantage of the expert information available through this resource.

The CWLA Team recommends that, at minimum, any technological solutions include capacity to:

- Give workers immediate contact with supervisors and/or emergency personnel;
- Document visits in real-time;
- Upload photos of children to the Massachusetts SACWIS system (iFamilyNet);

The CWLA Team recommends that EOHHS consider the following additional technological functions:

- Ability for workers to access SACWIS (iFamilyNet) data from the field on handheld devices that provide data security;
- Ability to complete forms and obtain parent/guardian signatures in the field;
- Ability to access teleconference/web-based conferencing from the field.

MEDICAL SCREENS FOR CHILDREN ENTERING CARE

The CWLA Team has provided EOHHS with current guidance for providing initial medical screenings and comprehensive evaluations from both the American Academy of Pediatrics (AAP), and the *CWLA Standards for Health Care Services for Children in Out of Home Care*.

The CWLA Team is examining recommendations that initial screening should be provided within 72 hours after a child enters care, and that if the initial screening is abbreviated, a more comprehensive examination should be provided within the first 30 days of care. CWLA is considering recommendations that will responsive to the concerns of children during the investigations process, young children who may not be able verbalize symptoms requiring medical attention, and others who may have special health care needs.

CWLA is gathering information from other states/jurisdictions that will help to inform its final recommendations on this issue. This will include technology supports and protocols that maximize real-time case level data sharing between DCF and MassHealth, so that case workers and caregivers have access to the most recent health information on the children they serve.

The CWLA Team recommends that whenever possible children in care continue to be served by their own pediatricians, in their medical homes (AAP, 2005).

BACKGROUND CHECKS

The CWLA Team has made the following recommendations in response to questions raised by the Governor's Office, EOHHS, and DCF concerning background checks and approval of foster parents and kinship resources:

- DCF should implement heightened case monitoring, home visitation, supervision, or case oversight for placements that have been approved through the waiver process. Heightened monitoring should include documentation of key factors/indicators related to the safety and well-being of each child placed in these homes. Increased monitoring is of particular concern given the number of young children placed in homes with approved waivers. While some of these safety and well-being factors/indicators may be addressed in home visitation policies and in

quality case practice, greater clarity may help to ensure that agency expectations are understood by caregivers and have been implemented.

- The Team recommends that legal counsel review case law decision to determine whether statutory or regulatory action is needed.

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- DCF and EOHHS should refrain from issuing any new exclusionary lists or revising exclusionary lists at this time.
- DCF and EOHHS should study current trends toward uniform approval processes for kinship and foster caregivers, including understanding the role of disproportionality in criminal prosecution and conviction, and the importance of placing children with relatives whenever possible.
- Draft standards in development by American Bar Association (ABA), National Association for Regulatory Administration (NARA), Generations United (GU), and Annie E. Casey Foundation (AECF) should serve as the foundation for background check standards in Massachusetts. These four organizations have been working for several years to establish standards that at once protect children and ensure that foster care/kinship applicants are assessed fairly. The draft includes mandatory, permanent exclusion for certain felony convictions, and exclusion for certain other convictions that have occurred within recent years.

The draft includes factors that should be considered in reviewing foster care/kinship applications and renewals (Generations United, 2014).

- A. If a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, and a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such approval must not be granted.
- B. If a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, and a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such approval must not be granted.
- C. If an applicant was convicted for a crime other than those included in A. and B., the applicant will **not** be automatically rejected as a foster parent. The agency must consider the following:
 1. the type of crime;
 2. the number of crimes;

3. the nature of the offenses;
4. the age of the individual at the time of conviction;
5. the length of time that has elapsed since the last conviction;
6. the relationship of the crime and the capacity to care for children;
7. evidence of rehabilitation; and
8. opinions of community members concerning the individual in question.

- The CWLA Team recommends that DCF's future process for completing and reviewing background checks should be an approval process rather than a waiver process. There should be clear criteria for positive

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decisions to approve a foster/kinship applicant, rather than a waiver process that requires exception. The CWLA team is available to work with EOHHS and DCF to develop such a positive process.

- The CWLA Team recommends that the executive branch and the legislature should consider carefully potential ramifications that any changes to background checks for foster and kinship resources might have on background check completion for other child caring situations, including but not limited to licensed child care centers, family child care, residential providers, and adoptive parent applicants through DCF and licensed adoption agencies.

YOUTH WHO HAVE RUNAWAY FROM PLACEMENT

A review of the DCF policies regarding the handling of cases involving youth who have runaway from placement indicates that the policy adequately provides for basic follow-up and notification of law enforcement and agency personnel.

In light of increased understanding regarding the reasons young people run away and the risks they face while on runaway status, the CWLA Team recommends that DCF consider protocols and related training to equip workers with knowledge needed to effectively reduce the incidence of runaway behavior.

There is growing awareness that youth on the run and those in care may be more likely targets of pimps and traffickers. The CWLA Team therefore recommends that DCF develop a protocol for addressing and reducing the potential for trafficking of children in out-of-home care or on runaway status.

The Team recommends that policies and procedures require a brief assessment for vulnerabilities that may place each child at heightened risk in the community in case of running away. Factors related to vulnerability to physical violence, sex trafficking, and exploitation are particularly important.

The CWLA Team recommends that DCF expand its policies and procedure to require that official electronic files contain a photo of each child who enters the care and custody of the agency. A review of intake policies is also warranted to ensure that photos of children in substantiated and open cases are also maintained.

On-Going Tasks of CWLA Team

The CWLA Team continues its review of the Oliver case, and the issues and concerns that have been identified by the legislature, the executive branch, DCF, the Office of the Child Advocate, and the media.

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Priority on-going tasks of the CWLA Team are:

- Continuing review of DCF policy being developed and/or revised. This review includes, at a minimum, the following policies:
 - Education Policy
 - Children Missing from DCF Care or Custody
 - Case Transfer
 - Ongoing Casework Policy, Procedures, & Documentation
 - Case Closing Policy
 - Policy for Review of Open Cases-Children Living at Home
 - Health Care-Policy for Children in DCF Care or Custody
 - Intake Policies (Protective, including Hotline) (Voluntary, Child Requiring Assistance, 51As in Certain Institutional Settings)
 - Foster Care Review
- Reviewing the DCF ICPM as well as models from other states that embrace family engagement, and can link improved outcomes for children and families to the use of their model.
- Researching the following issues:
 - Home visitation policies of other states/jurisdictions
 - Policies regarding boyfriends/non-relative household members
 - National trends relative to critical incident reports/child fatalities
 - Medical screening policies from other states/jurisdictions
- Conducting focus groups with representatives of various stakeholder constituencies, including:
 - Service providers
 - Service recipient families and youth
 - Foster parents
 - Adoptive parents

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- Advocacy groups

The safety and security of children - especially those entrusted to the supervision or care of the state child welfare agency - are of vital concern to the citizens of the Commonwealth. Child welfare systems across the country are experiencing challenges similar to those of the Commonwealth. While far too many jurisdictions are facing failures in their ability to keep a child safe, these failures cannot become acceptable. It is the responsibility of all concerned to act with thoughtfulness, diligence, and a sense of urgency to determine how DCF and the Commonwealth can best work to keep children safe, and to address the complex concerns that bring children and families to the attention of the agency.

CWLA has worked extensively to conduct program improvement reviews and to develop recommendations and action plans that develop more effective

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approaches to child safety concerns. This update provides our initial observations, and preliminary guidance toward these ends. A full report of our analysis and our full recommendations will be provided in our final report.

About CWLA

Since 1920, the Child Welfare League of America (CWLA) has been recognized as a consistent, strong, and non-partisan voice for children and families in the United States. CWLA is devoted to engaging all individuals, organizations, and systems in promoting the safety, permanence, and well being of children, youth, and their families. To further the mission of preserving, protecting, and promoting the well being of children, youth, and their families, CWLA develops standards of best practice to improve safety, permanence and well being for children served in child welfare systems. CWLA also provides technical assistance, training and consultation services to assist public and private child welfare agencies and to community organizations in reviewing programs and improving practice for the children and families that they serve.

CWLA uses its national recognized Standards for Excellence in Child Welfare as context for this work. CWLA's most recent set of standards, the CWLA National Blueprint for Excellence in Child Welfare, serves as a basis for its program specific policies and for the development of recommendations for quality improvement in service delivery. The National Blueprint for Excellence is intended to be a catalyst for change and to promote policies and practices that help organizations and communities more effectively ensure the safety and wellbeing of all children.

The following principles drawn from the CWLA National Blueprint serve as a guide in this quality improvement review, and for the initial guidance provided in this progress update.

1. **RIGHTS OF CHILDREN:** It is the responsibility of all members of society to work towards the shared goal of advancing the fundamental rights and needs of children.
2. **SHARED LEADERSHIP AND RESPONSIBILITY:** Families, individuals, organizations, and communities share responsibility for assuring the safety and well-being of children and youth. To help children and youth flourish, leaders at every level and in all realms ensure that individuals, families, organizations, and systems collaborate, communicate, create, and nurture meaningful partnerships.
3. **ENGAGEMENT/PARTICIPATION:** Children, youth, and families are engaged and empowered to promote family success and build community capacity. Service providers and organizations acknowledge, appreciate, and validate the voices and experiences of those whose lives they touch,

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- so that responsive, community-based resources and services are developed, nurtured, and sustained.
4. **SUPPORT AND SERVICES:** Families, individuals, communities, organizations, and systems protect children from abuse and neglect, and provide an array of supports and services that help children, youth, and their families to accomplish developmental tasks, develop protective factors, and strengthen coping strategies.
 5. **QUALITY IMPROVEMENT:** Supports and services are designed and implemented based on evidence and knowledge; data collection is focused on measuring outcomes and achieving success; continuous quality improvement is emphasized and supported; and innovative practices and programs are encouraged.
 6. **WORKFORCE:** The workforce consists of competent skilled people with a variety of experiences and representing varied disciplines. They are committed to high quality service delivery and are provided with the training, tools, resources, and support necessary to perform their roles effectively.
 7. **RACE, ETHNICITY, AND CULTURE:** Individuals, families, communities, organizations, and systems work together to understand, and promote equality, cultural humility, and strong racial, cultural, and ethnic identity, while showing consideration for individual differences, and respecting the sovereign rights of tribes.
 8. **FUNDING AND RESOURCES:** Funding decisions in the private sector and at federal, state, local, and tribal levels are informed by the certainty that the well-being of children, families, and communities are

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interconnected and that sufficient and equitable funding is essential to the well-being of all of them.

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FOCUS



Views from the Children's Research Center

Agency Workforce Estimation: Simple Steps for Improving Child Safety and Permanency

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Evidence is mounting that high staff turnover and decreased worker-client contact increase maltreatment recurrence and delay permanency. This information underscores the need for child welfare agencies to accurately estimate how much worker time and how many staff positions are required to meet the best practice standards they adopt for their clients. Case-based, prescriptive staffing estimation procedures can improve internal agency management. External funding sources, state legislatures, and county boards also need clear, credible estimates of the staffing level necessary to deliver services to children and families

at a practice standard that can reduce maltreatment, expedite permanency, and improve child well-being. Once that estimate is available to all parties, responsibility for adequately staffing the agency can be broadly shared among policy makers. Child welfare agencies are often asked to serve more clients or expand service delivery without additional capacity, and the impact of chronic understaffing may not be apparent until a tragedy occurs. Understaffed agencies face difficult decisions, but the ability to produce a defensible workforce estimate places them in a position to share these decisions, and the risks they entail, with their funding authorities.

Background

A 2001 survey of 43 state and 48 county child welfare agencies found an average annual worker turnover rate of 22% and a vacancy rate of 7% (American Public Human Services Association, 2001). These data underscore the fact that many child welfare agencies are experiencing workforce shortages. A literature review conducted by Kadushin and Harkness (2002) identified three reasons for worker turnover: (a) repeated failure to meet agency service delivery standards; (b) high caseloads or reporting (paperwork or data entry) burdens that decrease client contact; and (c) inadequate supervision, training, and support. Both staff surveys and exit interviews confirm that high caseloads are a common reason for leaving the child welfare profession (Institute for the Advancement of Social Work Research [IASWR], 2005; Robison, 2006).

If we grant that staff time is the primary resource for strengthening families and promoting child safety and permanency, how can agencies manage it more effectively?

While staff turnover has been recognized as a widespread problem for years, its impact on agency clients has not been carefully examined until recently. A review of recent research provides clear indications that client outcomes are adversely impacted. Other researchers (IASWR, 2005) have proposed tactics such as improved training and supervision, higher pay, and reduced caseloads that may reduce staff turnover. This article addresses a more fundamental management question: if we grant that staff time is the primary resource for strengthening families and promoting child safety and permanency, how can agencies manage it more effectively? Since many agency managers may not have reliable mechanisms for managing their workforce, this article attempts to outline some simple steps they can take to develop them.

This article briefly reviews research findings that link adequate staffing to improved child safety and well-being, and presents approaches for evaluating agency workforce needs and managing workforce capacity. It illustrates how agency managers can accomplish the following: (a) identify common symptoms of agency understaffing;

(b) estimate existing workforce capacity; and (c) estimate agency workload demand and understaffing.

The Link Between Child Welfare Workforce Capacity and Case Outcomes

The federal Child and Family Services Reviews (CFSR) set clear, measurable case outcome standards for placement stability, maltreatment recurrence, reunification, and foster care permanency (see, for example, U.S. Government Printing Office [GPO], 2006). They also evaluate several service delivery process measures such as timely investigation response or completion, construction of case plans, occurrence of child medical exams, and provision of services.

These CFSR standards have served as a framework for examining the relationship between workforce capacity and service delivery performance in several recent research studies.

In the earliest study of this type, the U.S. Government Accountability Office (GAO) examined the relationship between CFSR review findings from 27 states and their agencies' staff turnover rates (GAO, 2003). High agency turnover was associated with failure to meet established standards for investigation response, timely investigation completion, case plan completion, worker contact with children and families, maltreatment recurrence, and timely permanency. A later study, funded by the Annie E. Casey Foundation, also found a link between agency performance and workforce capacity (National Council on Crime and Delinquency [NCCD], 2005). The average annual staff turnover rate of 12 California county child welfare agencies was used to rank them into low (8%), moderate (13%), and high (23%) turnover groups. Families served by counties with low turnover had significantly lower maltreatment recurrence rates and were more likely to have approved, current case plans and up-to-date child medical exams. In addition, a study of private foster care agencies in Milwaukee found that high case manager turnover for a family (e.g., multiple workers serving the family's case within the last two years) increased

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the time required to achieve permanency for children (Flower, McDonald, & Sumski, 2005).

A recent analysis of CFSR case review findings from 50 states examined the relationship between worker case contacts and several foster care performance measures. The frequency of worker case contacts with parents and children had a significant positive correlation with placement stability, receipt of child mental health or educational services, and the timely achievement of permanency (Administration for Children and Families, 2006). Evidence is mounting that high staff turnover and decreased worker-client contact have a negative impact on critical client outcomes (National Conference of State Legislatures, 2006). Recent class action suits brought against state child welfare agencies provide indirect evidence of this relationship by identifying inadequate staffing as a major cause of harm to plaintiff children (see Farber & Munson, 2007; *Dwayne B. v. Granholm*, 2006; or *Olivia Y. v. Barbour*, 2007).

These findings will not surprise most child welfare professionals. They recognize that effective case management requires frequent client contact and a significant amount of worker time. Moreover, staff turnover is a widely accepted proxy for understaffing. When a large percentage of positions are vacant or filled with new staff, workforce capacity is diminished, and commitments to clients, the most basic of which is routine worker contact, cannot be met. It is difficult to evaluate child safety without seeing the child. Other factors, such as worker training or family engagement skills, may also impact case outcomes. Workforce issues are still central to performance, however, because practice skills have little impact unless workers have sufficient time to interact with client families. The question is, how can agencies best manage existing staff resources to improve client outcomes?

An underlying assumption of this article is that agencies cannot manage what they cannot measure. Consequently, a simple approach for measuring workforce capacity follows. Examples presented here are drawn from lessons learned by the Children’s Research Center (CRC) in conducting workload estimation studies in several states.

Is My Agency Understaffed?

For the purposes of this discussion, an understaffed condition means the current workforce capacity is not sufficient to meet established agency service delivery standards. Many administrators want to know if their agency is understaffed but lack methods for evaluating workforce capacity. Most agencies, however, have access to SACWIS or case file review data that describe case processing activity which may show common signs of understaffing.

As an example, every agency has standards for closing child protective services (CPS) investigations—typically, 30 to 45 days after assignment. When investigations are not closed in a timely fashion, a “backlog” of open past-due investigations accumulates. A single-digit backlog (expressed simply as a percentage of the number of past-due investigations at the end of the month divided by the total number assigned) may not reflect a serious problem. On the other hand, a backlog that increases each month and reaches double digits may indicate chronic understaffing, since workers are not meeting a basic agency case management standard.

A variety of similar case processing activities can also be monitored, such as standards for timely completion of case plans, court hearings, and dental or medical exams. Worker-client contact with in-home or foster care cases is one of the more critical expectations. Standards vary, but a monthly worker face-to-face contact with children, parents, or foster parents is a common, minimum expectation for ensuring child safety. Routine failure to meet these kinds of agency standards may reflect both understaffing and service delivery failure.

Many agencies have adopted quality assurance mechanisms that routinely monitor exceptions to their service delivery standards. SafeMeasures[®], which is employed by many jurisdictions also using the Structured Decision Making[®] (SDM) case management system, is one example (Jacobsen, 2007).¹ Agencies use SafeMeasures to systematically identify case contact failures, past-due case plans, medical exams, court

¹For more information on the SDM[®] system, see www.nccd-crc.org.

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hearings, and a variety of other case process standards. It also monitors CFSR client outcome performance measures, which are equally important. Research studies reviewed above suggest that substandard CFSR performance on the six-month maltreatment recurrence rate, placement stability, and permanency are related to understaffing (GPO, 2006).

Staff turnover is another easily observed indicator, typically computed by dividing the number of direct service staff leaving each year by the total authorized caseload-carrying positions. It is a good measure of how many staff an agency has to recruit, hire, and train to maintain its workforce capacity. Since public service hiring can take several months, agencies with high

Consistent observation of performance problems across several indicators increases the likelihood of an understaffed condition.

turnover usually have a high staff vacancy rate and a significant number of new staff in the workforce. Practices vary, but the first-year training requirement for new workers almost always reduces their caseload capacity, sometimes by 50% or more. Consequently, an agency with a 10% vacancy rate and 20%

of its positions occupied by new workers may be experiencing a 20% reduction in its effective workforce capacity. In most circumstances, this is a clear symptom of understaffing. It also illustrates a point often overlooked: both the workload capacity of new staff and the vacancy rate must be weighed to secure an accurate estimate of workload capacity. Administrators should attempt to secure this estimate at least annually and monitor it carefully over time.

Indicators like those reviewed above can serve as a simple diagnostic checklist for understaffing. Most agencies will have access to at least some of them. The available list should be monitored over time. Consistent observation of performance problems across several indicators increases the likelihood of an understaffed condition.

While a checklist can help an agency identify an understaffed condition, it does not estimate the magnitude of understaffing nor indicate how staff could be redeployed to address the problem. This requires a more comprehensive workload estimation approach, described below.

How Many Staff Does My Agency Need?

Caseload-to-staff ratios provide a helpful guideline, rather than a precise estimate, of the number of staff required to deliver child welfare services (Child Welfare League of America, 2006). Since agencies differ in their operating characteristics, service delivery expectations, and personnel practices, it is difficult for a fixed caseload ratio to accurately estimate an agency's staffing requirement. The best estimate requires customized estimation of two agency characteristics: (a) the time direct service workers have available to serve clients, and

- the worker time required to meet service delivery standards for clients. The first parameter, worker time available, represents the effective workload capacity of an average direct service worker, i.e., how much time does a worker have to serve agency clients in an average month or a year?

The worker time required to meet service delivery standards for clients is more difficult to estimate. Agency standards vary, but they are very important constructs. They establish the minimum performance criteria workers are asked to meet for their clients, and are represented as such to oversight agencies and the public. Consequently, a responsible child welfare staffing estimate should identify the workforce capacity necessary to meet agency service delivery standards routinely.

Since the standards agencies adopt vary across case types in terms of worker-client contact expectations and a variety of other factors, the best way to establish the worker time necessary to meet these standards is to conduct a field study. Given the cost and effort involved, not all agencies are able to or will conduct one. Agencies can, however, improve their workforce management by adopting the workload findings and estimation procedures from jurisdictions that have conducted field studies. A basic approach is outlined in the next section.

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Estimating Staff Time Available

Table 1 describes a method for estimating how much time workers have available to meet agency service delivery standards for their clients. The table displays a median estimate drawn from several CRC workload studies for experienced workers (training time would be much higher for new workers). The estimate assumes an average work month of 173.3 paid hours and subtracts unavailable time from it. Annual leave or training records were converted to monthly figures for this purpose. Additionally, staff cannot serve cases during training, leave (vacation, sick, holiday, and personal time), or break hours. The subtraction of training, leave, and break time reduces time available to 136.0 hours per month.

to serve his or her clients. New workers, who spend more time in training, typically have a much lower workload capacity.

Estimating Worker Time Required to Serve Clients

Estimating workers' case time is more challenging, since workers' service activities must be observed and recorded in the field for a variety of cases. A brief discussion of workload field study methods describes how these time estimates were derived and what they represent.

Each CRC workload study has employed similar research methods. Workers are trained to record daily, under actual field conditions, the time they require to

| Table 1 | |
|---|----------------------|
| Estimated Monthly Time Available Based on Median CRC Findings | |
| Experienced Social Worker | Median Time in Hours |
| Total work hours per month | 173.3 |
| Median training time | -4.2 |
| Median leave time (vacation, sick, holiday, personal) | -23.9 |
| Daily break time (usually .5 hours per day) | -9.2 |
| Total work hours minus training, leave, and break time | 136.0 |
| Median case support time | -6.5 |

- serve a randomly sampled foster care or in-home family case for one month; and

- complete a random sample of intakes, CPS investigations, and other case studies from assignment to completion. Workers are asked to meet or exceed agency service delivery standards for each sample case they record, and supervisory reviews verify that standards were met.

For example, standards for a child in foster care with a return home goal may require the caseworker to contact the child, the child's parent, and the foster caregiver each

Note: Table 1 reports median values for every category, and results therefore differ slightly from a summation.

month; coordinate with service providers; conduct safety assessments; and update case service plans. Additional monthly

Two additional subtractions are made for case support and administrative tasks performed by workers observed in past CRC workload studies. The 6.5 hours of case support is the time workers spend serving cases not assigned to them, e.g., emergency on-call activity, case consultation, substitute coverage for other workers, and backup coverage. The 7.3 hours of administrative time represents non-case-related activity such as unit meetings; supervisory sessions; and participation in agency task forces, committees, or special assignments. These two subtractions result in a net 122.3 hours available each month for the average experienced social worker. This is the effective workforce capacity available expectations might include preparing a permanency planning review, appearing in court, or conducting a family conference. Comparable estimation procedures apply to CPS investigations, which have similar standards for contacting alleged victims and caregivers, completing safety and risk assessments, etc. Workers also record the time necessary to document all case-related activities, including travel and documentation.

Sample case times are averaged to estimate the time required to meet standards for each case type. Random sampling ensures that both difficult, time-consuming case events and routine practice conditions are

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represented. Table 2 shows the median time estimate observed across five child welfare agency workload studies. It reflects the time required to meet agency standards for several hundred randomly assigned cases. Agency standards varied, but all required a minimum of one monthly contact with the child and parent or substitute caregiver for in-home and foster care cases.

The CPS investigation standards also vary by agency, but the times shown are broadly representative.

These estimates are prescriptive in that they reflect the time required to serve clients at the best practice standard employed by each agency. Workers could serve a foster care case without making monthly face-to-face contacts with the child, parent, or caregiver, and a less rigorous practice standard would take much less time than the estimates shown, but the objective of each CRC study is to represent good, not substandard, practice. The estimates are designed to identify the workforce capacity that can meet agency service delivery standards.

For agencies that have not conducted their own workload study, these findings can serve as a reference point for estimating the time direct service workers may need to perform similar tasks. For example, intake processing for a CPS maltreatment report from call-in

to investigation/assignment required 1.1 hours. Informational calls that did not allege maltreatment took, on average, only 0.3 hours.

| Table 2 Median Monthly Worker Time Estimates for Cases That Met Standards | |
|--|-----------------------------|
| Agency Service Area | Median Worker Time in Hours |
| CPS intake | |
| Maltreatment report | 1.1 |
| Informational call | 0.3 |
| CPS investigation/assessment | |
| Non-placement investigation | 8.1 |
| Placement investigation | 18.6 |
| Child and family services | |
| In-home family case | 6.6 |
| Child placement case | |
| New child case | 9.5 |
| Ongoing, return home goal | 7.5 |
| Ongoing, other goal | 5.6 |

The CPS investigation/assessment section of Table 2 displays time required to complete a CPS investigation.

Non-placement investigations required

8.1 hours, while those that involved a child placement required 18.6 hours. Clearly, placement investigations entail a great deal more worker time, which should be acknowledged in workload estimation.

The child and family services section presents monthly worker time for serving in-home family cases (6.6 hours) and child placement cases. Three subcategories are shown for placement: new cases, ongoing

cases with a return home goal, and ongoing cases with another goal (other goals include maintaining a child's own home, placement, guardian placement, termination of parental rights, adoption, and/or independent living). Significantly different worker times for these case types have been found in field studies. New cases require more worker assessment and case planning. Return home goal cases require permanency hearings and service delivery to and contact with parents, children, and foster caregivers.

Constructing an Agency Workload Estimate

The worker case time estimates in Table 2 and the monthly worker hours available in Table 1 can be used to compute a simple but useful estimate of workforce capacity and service delivery demand.

Table 3 provides an example estimate for a typical operating month. The agency's monthly intake and investigation activity and average in-home or foster care caseloads could be observed by computing averages across a prior 6- or 12-month period. Once these case counts are secured, the workload demand computation is straightforward. The worker time associated with each case type is multiplied by the number of intakes,

| Table 3 | | | |
|--|-----------------|-----------------------|--------------------|
| Example Agency Estimate of Monthly Workload Demand | | | |
| Agency Service Area | Work Hours/Case | Average Monthly Cases | Total Worker Hours |
| CPS intake | | | |
| Maltreatment report | 1.1 | 2,291 | 2,520.1 |
| Screened out | 0.3 | 4,694 | 1,408.2 |
| Intake subtotal | | | 3,928.3 |
| CPS investigation/assessment | | | |
| Completed, no placement | 8.1 | 812 | 6,577.2 |
| Completed with placement | 18.6 | 63 | 1,171.8 |
| Investigation/assessment subtotal | | | 7,749.0 |
| In-home service cases | | | |
| In-home family case | 6.6 | 1,356 | 8,949.6 |
| In-home case subtotal | | | 8,949.6 |
| Child placement cases | | | |
| New child case | 9.5 | 123 | 1,168.5 |
| Ongoing child case, return home goal | 7.5 | 921 | 6,907.5 |
| Ongoing child case, other goal | 5.6 | 614 | 3,438.4 |
| Placement case subtotal | | | 11,514.4 |
| Total agency workload demand in worker hours | | | 32,141.3 |
| Staff required to meet estimated workload demand (total demand divided by worker time available [122.3 hrs. per month]) | | | 262.8 |
| Agency workforce capacity (available staff) | | | 216 |

investigations, or service cases. Table 3 operational data show 2,291 maltreatment reports screened during an average operating month. Since each one requires 1.1 worker hours, 2,520 hours are required to meet this demand. A similar approach is used to estimate CPS investigation demand. The 812 completed non-placement investigations require an estimated 6,577.2 staff hours. The 63 investigations involving a child placement require 1,171.8 staff hours. In-home service and placement case demand are estimated in the same way.

Staff hours shown for each service delivery area are summed to represent a total workload demand of 32,141.3 staff hours. Total staff hours are converted to staff positions by dividing the total demand by the 122.3 available hours per worker (see Table 1).

3,928.3

The example indicates that 262.8 staff positions are required to meet agency standards given the current demand for child welfare services. This estimate may be compared to authorized agency positions or available positions (authorized positions minus vacancies). In this example, the agency's available workforce capacity is 216 positions.

Since 262.8 positions are required to meet workload demand, it is understaffed by 46.8 positions (262.8 minus 216). If, for example, 230 positions were authorized, an additional authorization of 16.8 positions would be required.

Applying the Workload Estimate

Agencies can approximate their own workforce needs by securing comparable service delivery data and applying the case time estimates shown here. Monthly

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worker time available (122.3 hours) could be adjusted by computing local training, leave, and break time (see Table 1).

Workforce demand for service delivery areas (intake, investigation, in-home, or foster care case services) can be calculated separately. For example, CPS investigations required 7,749 hours per month, which implies a 63.4-position workforce estimate (7,749 divided by 122.3). This could be compared to current assigned positions to secure a reasonable approximation of how adequately that unit is staffed.

Caveats

Since some intake units must be staffed 24 hours a day regardless of call volume, intake counts may not fully account for assigned positions. Many SDM sites employ risk-based contact standards which are not fully incorporated into these estimates. Rural workers may require additional compensation for travel to meet the same service delivery standards. Finally, all the case time and position estimates shown here apply to case-carrying workers and do not include supervisors or clerical staff. They also exclude foster and adoption home licensing workers, resource development staff, forensic interviewers, and other specialized staff.²

Summary and Conclusion

Staff time is a critical resource child welfare agencies deploy in their efforts to strengthen families and promote child safety and permanency. This article presents a case for improving workforce management by reviewing research findings that link understaffing to poor performance on CFSR case outcome measures. It describes simple approaches agencies can adopt to conduct a quick assessment of their workforce needs and improve their workforce management.

A more detailed version of this article was published in *Protecting Children* (Volume 23, Number 3), a journal of the American Humane Association, and may also be accessed on CRC's website, www.nccd-crc.org.

²For additional caveats, see the full version of this report, available at www.nccd-crc.org.

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American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases

Introduction

These standards promote quality representation and uniformity of practice throughout the country for parents' attorneys in child abuse and neglect cases. The standards were written with the help of a committee of practicing parents' attorneys and child welfare professionals from different jurisdictions in the country. With their help, the standards were written with the difficulties of day-to-day practice in mind, but also with the goal of raising the quality of representation. While local adjustments may be necessary to apply these standards in practice, jurisdictions should strive to meet their fundamental principles and spirit.

The standards are divided into the following categories:

- Summary of the Standards
- Basic Obligations of Parents' Attorneys
- Obligations of Attorney Manager
- The Role of the Court

The standards include "black letter" requirements written in bold. Following the black letter standards are "actions." These actions further discuss how to fulfill the standard; implementing each standard requires the accompanying action. After the action is "commentary" or a discussion of why the standard is necessary and how it should be applied. When a standard does not need further explanation, no action or commentary appears. Several standards relate to specific sections of the Model Rules of Professional Conduct, and the Model Rules are referenced in these standards. The terms "parent" and "client" are used interchangeably throughout the document. These standards apply to all attorneys who represent parents in child abuse and neglect cases, whether they work for an agency or privately.

As was done in the *Standards of Practice for Attorneys Representing Child Welfare Agencies*, ABA 2004, a group of standards for attorney managers is included in these standards. These standards primarily apply to parents' attorneys who work for an agency or law firm – an institutional model of representation. Solo practitioners, or attorneys who individually receive appointments from the court, may wish to review this part of the standards, but may find some do not apply. However, some standards in this section, such as those about training and caseload, are relevant for all parents' attorneys.

As was done in the *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, ABA 1996, a section of the standards concerns the Role of the Court in implementing these *Standards*. The ABA and the National Council of Juvenile and Family Court

Judges have policies concerning the importance of the court in ensuring that all parties in abuse and neglect cases have competent representation.

Representing a parent in an abuse and neglect case is a difficult and emotional job. There are many responsibilities. These standards are intended to help the attorney prioritize duties and manage the practice in a way that will benefit each parent on the attorney's caseload.

APPENDIX B

**American Bar Association Standards for Attorneys
Representing Parents**

SUMMARY: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases

Basic Obligations: The parent's attorney shall:

General:

- **Adhere to all relevant jurisdiction-specific training and mentoring requirements before accepting a court appointment to represent a parent in an abuse or neglect case.**
- **Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.**
- **Understand and protect the parent's rights to information and decision making while the child is in foster care.**
- **Actively represent a parent in the pre-petition phase of a case, if permitted within the jurisdiction.**
- **Avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.**
- **Cooperate and communicate regularly with other professionals in the case.**

Relationship with the Client:

- **Advocate for the client's goals and empower the client to direct the representation and make informed decisions based on thorough counsel.**
- **Act in accordance with the duty of loyalty owed to the client.**
- **Adhere to all laws and ethical obligations concerning confidentiality.**
- **Provide the client with contact information in writing and establish a message system that allows regular attorney-client contact.**
- **Meet and communicate regularly with the client well before court proceedings. Counsel the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client's rights in the**

pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with service plans.

- **Work with the client to develop a case timeline and tickler system.**
- **Provide the client with copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order.**
- **Be alert to and avoid potential conflicts of interest that would interfere with the competent representation of the client.**
- **Act in a culturally competent manner and with regard to the socioeconomic position of the parent throughout all aspects of representation.**
- **Take diligent steps to locate and communicate with a missing parent and decide representation strategies based on that communication.**
- **Be aware of the unique issues an incarcerated parent faces and provide competent representation to the incarcerated client.**
- **Be aware of the client's mental health status and be prepared to assess whether the parent can assist with the case.**

Investigation:

- **Conduct a thorough and independent investigation at every stage of the proceeding.**
- **Interview the client well before each hearing, in time to use client information for the case investigation.**

Informal Discovery:

- **Review the child welfare agency case file.**
- **Obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers.**

Formal Discovery:

- **When needed, use formal discovery methods to obtain information.**

Court Preparation:

- **Develop a case theory and strategy to follow at hearings and negotiations.**
- **Timely file all pleadings, motions, and briefs. Research applicable legal issues and advance legal arguments when appropriate.**
- **Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.**
- **Aggressively advocate for regular visitation in a family-friendly setting.**
- **With the client's permission, and when appropriate, engage in settlement negotiations and mediation to resolve the case.**
- **Thoroughly prepare the client to testify at the hearing.**
- **Identify, locate and prepare all witnesses.**
- **Identify, secure, prepare and qualify expert witness when needed. When permissible, interview opposing counsel's experts.**

Hearings:

- **Attend and prepare for all hearings, including pretrial conferences.**
- **Prepare and make all appropriate motions and evidentiary objections.**
- **Present and cross-examine witnesses, prepare and present exhibits.**
- **In jurisdictions in which a jury trial is possible, actively participate in jury selection and drafting jury instructions.**
- **Request closed proceedings (or a cleared courtroom) in appropriate cases.**
- **Request the opportunity to make opening and closing arguments.**
- **Prepare proposed findings of fact, conclusions of law and orders when they will be used in the court's decision or may otherwise benefit the client.**

Post Hearings/Appeals:

- **Review court orders to ensure accuracy and clarity and review with client.**
- **Take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court.**

- **Consider and discuss the possibility of appeal with the client.**

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- **If the client decides to appeal, timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal and closely follow the jurisdiction's Rules of Appellate Procedure.**
- **Request an expedited appeal, when feasible, and file all necessary paperwork while the appeal is pending.**
- **Communicate the results of the appeal and its implications to the client.**

Obligations of Attorney Managers:

Attorney Managers are urged to:

- **Clarify attorney roles and expectations.**
- **Determine and set reasonable caseloads for attorneys.**
- **Advocate for competitive salaries for staff attorneys.**
- **Develop a system for the continuity of representation.**
- **Provide attorneys with training and education opportunities regarding the special issues that arise in the client population.**
- **Establish a regular supervision schedule.**
- **Create a brief and forms bank.**
- **Ensure the office has quality technical and support staff as well as adequate equipment, library materials, and computer programs to support its operations.**
- **Develop and follow a recruiting and hiring practice focused on hiring highly qualified candidates.**
- **Develop and implement an attorney evaluation process.**
- **Work actively with other stakeholders to improve the child welfare system, including court procedures.**

Role of the Court

The Court is urged to:

- **Recognize the importance of the parent attorney's role.**

- **Establish uniform standards of representation for parents' attorneys.**

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- **Ensure the attorneys who are appointed to represent parents in abuse and neglect cases are qualified, well-trained, and held accountable for practice that complies with these standards.**
- **Ensure appointments are made when a case first comes before the court, or before the first hearing, and last until the case has been dismissed from the court's jurisdiction.**
- **Ensure parents' attorneys receive fair compensation.**
- **Ensure timely payment of fees and costs for attorneys.**
- **Provide interpreters, investigators and other specialists needed by the attorneys to competently represent clients. Ensure attorneys are reimbursed for supporting costs, such as use of experts, investigation services, interpreters, etc.**
- **Ensure that attorneys who are receiving appointments carry a reasonable caseload that would allow them to provide competent representation for each of their clients.**
- **Ensure all parties, including the parent's attorney, receive copies of court orders and other documentation.**
- **Provide contact information between clients and attorneys.**
- **Ensure child welfare cases are heard promptly with a view towards timely decision making and thorough review of issues.**

Basic Obligations: The parent’s attorney shall:

General¹

- **Adhere to all relevant jurisdiction-specific training and mentoring requirements before accepting a court appointment to represent a parent in an abuse or neglect case.**

Action: The parent’s attorney must participate in all required training and mentoring before accepting an appointment.

Commentary: As in all areas of law, it is essential that attorneys learn the substantive law as well as local practice. A parent’s fundamental liberty interest in the care and custody of his or her child is at stake, and the attorney must be adequately trained to protect this interest. Because the stakes are so high, the standards drafting committee recommends all parents’ attorneys receive a minimum of 20 hours of relevant training before receiving an appointment and a minimum of 15 hours of related training each year. Training should directly relate to the attorney’s child welfare practice.² This is further detailed in Attorney Managers Standard 5 below. In addition, the parent’s attorney should actively participate in ongoing training opportunities. Even if the attorney’s jurisdiction does not require training or mentoring, the attorney should seek it. Each state should make comprehensive training available to parents’ attorneys throughout the state. Training may include relevant online or video training.

- **Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.**

Action: Parents’ attorneys may come to the practice with competency in the various aspects of child abuse and neglect practice, or they need to be trained on them. It is essential for the parent’s attorney to read and understand all state laws, policies and procedures regarding child abuse and neglect. In addition, the parent’s attorney must be familiar with the following laws to recognize when they are relevant to a case and should be prepared to research them when they are applicable:

Titles IV-B and IV-E of the Social Security Act, including the Adoption and Safe Families Act (ASFA), 42 U.S.C. §§ 620-679 and the ASFA Regulations,
45 C.F.R. Parts 1355, 1356, 1357
Child Abuse Prevention Treatment Act (CAPTA), P.L.108-36
Indian Child Welfare Act (ICWA) 25 U.S.C. §§ 1901-1963, the ICWA Regulations, 25 C.F.R. Part 23, and the Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67, 584 (Nov. 26, 1979)

State Indian Child Welfare Act laws

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Multi-Ethnic Placement Act (MEPA), as amended by the Inter-Ethnic Adoption Provisions of 1996 (MEPA-IEP) 42 U.S.C. § 622 (b)(9) (1998), 42

U.S.C. § 671(a)(18) (1998), 42 U.S.C. § 1996b (1998).

Interstate Compact on Placement of Children (ICPC)

Foster Care Independence Act of 1999 (FCIA), P.L. 106-169 Individuals with Disabilities Education Act (IDEA), P.L. 91-230 Family Education

Rights Privacy Act (FERPA), 20 U.S.C. § 1232g

Health Insurance Portability and Accountability Act of 1996 (HIPPA), P. L., 104-192 § 264, 42 U.S.C. § 1320d-2 (in relevant part)

Public Health Act, 42 U.S.C. Sec. 290dd-2 and 42 C.F.R. Part 2

Immigration laws relating to child welfare and child custody

State laws and rules of evidence

State laws and rules of civil procedure State

laws and rules of criminal procedure

State laws concerning privilege and confidentiality, public benefits, education, and disabilities

State laws and rules of professional responsibility or other relevant ethics standards

State laws regarding domestic violence State domestic relations laws

Commentary: Although the burden of proof is on the child welfare agency, in practice the parent and the parent's attorney generally must demonstrate that the parent can adequately care for the child. The parent's attorney must consider all obstacles to this goal, such as criminal charges against the parent, immigration issues, substance abuse or mental health issues, confidentiality concerns, permanency timelines, and the child's individual service issues. To perform these functions, the parent's attorney must know enough about all relevant laws to vigorously advocate for the parent's interests. Additionally, the attorney must be able to use procedural, evidentiary and confidentiality laws and rules to protect the parent's rights throughout court proceedings.

- **Understand and protect the parent's rights to information and decision making while the child is in foster care.**

Action: The parent's attorney must explain to the parent what decision-making authority remains with the parent and what lies with the child welfare agency while the child is in foster care. The parent's attorney should seek updates and reports from any service provider working with the child/family or help the client obtain information about the child's safety, health, education and well-being when the client desires. Where decision-making rights remain, the parent's attorney should assist the parent in exercising his or her rights to continue to make decisions regarding the child's medical, mental health and

educational services. If necessary, the parent's attorney should intervene with the child welfare agency, provider agencies, medical providers and the school to ensure the parent

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has decision-making opportunities. This may include seeking court orders when the parent has been left out of important decisions about the child's life.

Commentary: Unless and until parental rights are terminated, the parent has parental obligations and rights while a child is in foster care. Advocacy may be necessary to ensure the parent is allowed to remain involved with key aspects of the child's life. Not only should the parent's rights be protected, but continuing to exercise as much parental responsibility as possible is often an effective strategy to speed family reunification. Often, though, a parent does not understand that he or she has the right to help make decisions for, or obtain information about, the child. Therefore, it is the parent's attorney's responsibility to counsel the client and help the parent understand his or her rights and responsibilities and try to assist the parent in carrying them out.

- **Actively represent a parent in the prepetition phase of a case, if permitted within the jurisdiction.**

Action: The goal of representing a parent in the prepetition phase of the case is often to deter the agency from deciding to file a petition or to deter the agency from attempting to remove the client's child if a petition is filed. The parent's attorney should counsel the client about the client's rights in the investigation stage as well as the realistic pros and cons of cooperating with the child welfare agency (i.e., the parent's admissions could be used against the client later, but cooperating with services could eliminate a petition filing). The parent's attorney should acknowledge that the parent may be justifiably angry that the agency is involved with the client's family, and help the client develop strategies so the client does not express that anger toward the caseworker in ways that may undermine the client's goals. The attorney should discuss available services and help the client enroll in those in which the client wishes to participate. The attorney should explore conference opportunities with the agency. If it would benefit the client, the attorney should attend any conferences. There are times that an attorney's presence in a conference can shut down discussion, and the attorney should weigh that issue when deciding whether to attend. The attorney should prepare the client for issues that might arise at the conference, such as services and available kinship resources, and discuss with the client the option of bringing a support person to a conference.

Commentary: A few jurisdictions permit parents' attorneys to begin their representation before the child welfare agency files a petition with the court. When the agency becomes involved with the families, it can refer parents to attorneys so that parents will have the benefit of counsel throughout the life of the case. During the prepetition phase, the parent's attorney has the opportunity to work with the parent and help the parent fully understand the issues and the parent's chances of retaining custody of the child. The parent's attorney also has the chance to encourage the agency to make reasonable efforts to work with the family, rather than filing a petition. During this phase, the attorney should work intensively with the parent to explore all appropriate services.

- **Avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.**³

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Action: The parent's attorney should not request continuances unless there is an emergency or it benefits the client's case. If continuances are necessary, the parent's attorney should request the continuance in writing, as far as possible in advance of the hearing, and should request the shortest delay possible, consistent with the client's interests. The attorney must notify all counsel of the request. The parent's attorney should object to repeated or prolonged continuance requests by other parties if the continuance would harm the client.

Commentary: Delaying a case often increases the time a family is separated, and can reduce the likelihood of reunification. Appearing in court often motivates parties to comply with orders and cooperate with services. When a judge actively monitors a case, services are often put in place more quickly, visitation may be increased or other requests by the parent may be granted. If a hearing is continued and the case is delayed, the parent may lose momentum in addressing the issues that led to the child's removal or the parent may lose the opportunity to prove compliance with case plan goals. Additionally, the Adoption and Safe Families Act (ASFA) timelines continue to run despite continuances.

- **Cooperate and communicate regularly with other professionals in the case.**⁴

Action: The parent's attorney should communicate with attorneys for the other parties, court appointed special advocates (CASAs) or guardians ad litem (GALs). Similarly, the parent's attorney should communicate with the caseworker, foster parents and service providers to learn about the client's progress and their views of the case, as appropriate. The parent's attorney should have open lines of communication with the attorney(s) representing the client in related matters such as any criminal, protection from abuse, private custody or administrative proceedings to ensure that probation orders, protection from abuse orders, private custody orders and administrative determinations do not conflict with the client's goals in the abuse and neglect case.

Commentary: The parent's attorney must have all relevant information to try a case effectively. This requires open and ongoing communication with the other attorneys and service providers working with the client and family. Rules of professional ethics govern contact with represented and unrepresented parties. In some states, for instance, attorneys may not speak with child welfare caseworkers without the permission of agency counsel. The parent's attorney must be aware of local rules on this issue and seek permission to speak with represented parties when that would further the client's interests.

Relationship with the Client⁵

- **Advocate for the client's goals and empower the client to direct the representation and make informed decisions based on thorough counsel.**⁶

Action: Attorneys representing parents must understand the client's goals and pursue them vigorously. The attorney should explain that the attorney's job is to represent the client's interests and regularly inquire as to the client's goals, including ultimate case

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goals and interim goals. The attorney should explain all legal aspects of the case and provide comprehensive counsel on the advantages and disadvantages of different options. At the same time, the attorney should be careful not to usurp the client's authority to decide the case goals.

Commentary: Since many clients distrust the child welfare system, the parent's attorney must take care to distinguish him or herself from others in the system so the client can see that the attorney serves the client's interests. The attorney should be mindful that parents often feel disempowered in child welfare proceedings and should take steps to make the client feel comfortable expressing goals and wishes without fear of judgment. The attorney should clearly explain the legal issues as well as expectations of the court and the agency, and potential consequences of the client failing to meet those expectations. The attorney has the responsibility to provide expertise, and to make strategic decisions about the best ways to achieve the parent's goals, but the client is in charge of deciding the case goals and the attorney must act accordingly.

- **Act in accordance with the duty of loyalty owed to the client.**

Action: Attorneys representing parents should show respect and professionalism towards their clients. Parents' attorneys should support their clients and be sensitive to the client's individual needs. Attorneys should remember that they may be the client's only advocate in the system and should act accordingly.

Commentary: Often attorneys practicing in abuse and neglect court are a close knit group who work and sometimes socialize together. Maintaining good working relationships with other players in the child welfare system is an important part of being an effective advocate. The attorney, however, should be vigilant against allowing the attorney's own interests in relationships with others in the system to interfere with the attorney's primary responsibility to the client. The attorneys should not give the impression to the client that relationships with other attorneys are more important than the representation the attorney is providing the client. The client must feel that the attorney believes in him or her and is actively advocating on the client's behalf.

- **Adhere to all laws and ethical obligations concerning confidentiality.⁷**

Action: Attorneys representing parents must understand confidentiality laws, as well as ethical obligations, and adhere to both with respect to information obtained from or about the client. The attorney must fully explain to the client the advantages and disadvantages of choosing to exercise, partially waive, or waive a privilege or right to confidentiality. Consistent with the client's interests and goals, the attorney must seek to protect from disclosure confidential information concerning the client.

Commentary: Confidential information contained in a parent's substance abuse treatment records, domestic violence treatment records, mental health records and medical records is often at issue in abuse and neglect cases. Improper disclosure of confidential information early in the proceeding may have a negative impact on the manner in which

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the client is perceived by the other parties and the court. For this reason, it is crucial for the attorney to advise the client promptly as to the advantages and disadvantages of releasing confidential information, and for the attorney to take whatever steps necessary to protect the client's privileges or rights to confidentiality.

- **Provide the client with contact information in writing and establish a message system that allows regular attorney-client contact.⁸**

Action: The parent's attorney should ensure the parent understands how to contact the attorney and that the attorney wants to hear from the client on an ongoing basis. The attorney should explain that even when the attorney is unavailable, the parent should leave a message. The attorney must respond to client messages in a reasonable time period. The attorney and client should establish a reliable communication system that meets the client's needs. For example, it may involve telephone contact, email or communication through a third party when the client agrees to it. Interpreters should be used when the attorney and client are not fluent in the same language.

Commentary: Gaining the client's trust and establishing ongoing communication are two essential aspects of representing the parent. The parent may feel angry and believe that all of the attorneys in the system work with the child welfare agency and against that parent. It is important that the parent's attorney, from the beginning of the case, is clear with the parent that the attorney works for the parent, is available for consultation, and wants to communicate regularly. This will help the attorney support the client, gather information for the case and learn of any difficulties the parent is experiencing that the attorney might help address. The attorney should explain to the client the benefits of bringing issues to the attorney's attention rather than letting problems persist. The attorney should also explain that the attorney is available to intervene when the client's relationship with the agency or provider is not working effectively. The attorney should be aware of the client's circumstances, such as whether the client has access to a telephone, and tailor the communication system to the individual client.

- **Meet and communicate regularly with the client well before court proceedings. Counsel the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with service plans.⁹**

Action: The parent's attorney should spend time with the client to prepare the case and address questions and concerns. The attorney should clearly explain the allegations made against the parent, what is likely to happen before, during and after each hearing, and what steps the parent can take to increase the likelihood of reuniting with the child. The attorney should explain any settlement options and determine whether the client wants the attorney to pursue such options. The attorney should explain courtroom procedures. The attorney should write to the client to ensure the client understands what happened in court and what is expected of the client.

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The attorney should ensure a formal interpreter is involved when the attorney and client are not fluent in the same language. The attorney should advocate for the use of an interpreter when other professionals in the case who are not fluent in the same language as the client are interviewing the client as well.

The attorney should be available for in-person meetings or telephone calls to answer the client's questions and address the client's concerns. The attorney and client should work together to identify and review short and long-term goals, particularly as circumstances change during the case.

The parent's attorney should help the client access information about the child's developmental and other needs by speaking to service providers and reviewing the child's records. The parent needs to understand these issues to make appropriate decisions for the child's care.

The parent's attorney and the client should identify barriers to the client engaging in services, such as employment, transportation, and financial issues. The attorney should work with the client, caseworker and service provider to resolve the barriers.

The attorney should be aware of any special issues the parents may have related to participating in the proposed case plan, such as an inability to read or language differences, and advocate with the child welfare agency and court for appropriate accommodations.

Commentary: The parent's attorney's job extends beyond the courtroom. The attorney should be a counselor as well as litigator. The attorney should be available to talk with the client to prepare for hearings, and to provide advice and information about ongoing concerns. Open lines of communication between attorneys and clients help ensure clients get answers to questions and attorneys get the information and documents they need.

- **Work with the client to develop a case timeline and tickler system.**

Action: At the beginning of a case, the parent's attorney and client should develop timelines that reflect projected deadlines and important dates and a tickler/calendar system to remember the dates. The timeline should specify what actions the attorney and parent will need to take and dates by which they will be completed. The attorney and the client should know when important dates will occur and should be focused on accomplishing the objectives in the case plan in a timely way. The attorney should

provide the client with a timeline/calendar, outlining known and prospective court dates, service appointments, deadlines and critical points of attorney-client contact. The attorney should record federal and state law deadlines in the system (e.g., the 15 of 22 month point that would necessitate a termination of parental rights (TPR), if exceptions do not apply).

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Commentary: Having a consistent calendaring system can help an attorney manage a busy caseload. Clients should receive a hard copy calendar to keep track of appointments and important dates. This helps parents stay focused on accomplishing the service plan goals and meeting court-imposed deadlines.

- **Provide the client with copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order.¹⁰**

Action: The parent's attorney should provide all written documents to the client or ensure that they are provided in a timely manner and ensure the client understands them. If the client has difficulty reading, the attorney should read the documents to the client. In all cases, the attorney should be available to discuss and explain the documents to the client.

Commentary: The parent's attorney should ensure the client is informed about what is happening in the case. Part of doing so is providing the client with written documents and reports relevant to the case. If the client has this information, the client will be better able to assist the attorney with the case and fulfill his or her parental obligations. The attorney must be aware of any allegations of domestic violence in the case and not share confidential information about an alleged or potential victim's location.

- **Be alert to and avoid potential conflicts of interest that would interfere with the competent representation of the client.¹¹**

Action: The parent's attorney must not represent both parents if their interests differ. The attorney should generally avoid representing both parents when there is even a potential for conflicts of interests. In situations involving allegations of domestic violence the attorney should never represent both parents.

Commentary: In most cases, attorneys should avoid representing both parents in an abuse or neglect case. In the rare case in which an attorney, after careful consideration of potential conflicts, may represent both parents, it should only be with their informed consent. Even in cases in which there is no apparent conflict at the beginning of the case, conflicts may arise as the case proceeds. If this occurs, the attorney might be required to withdraw from representing one or both parents. This could be difficult for the clients and delay the case. Other examples of potential conflicts of interest that the attorney should

avoid include representing multiple fathers in the same case or representing parties in a separate case who have interests in the current case.

In analyzing whether a conflict of interest exists, the attorney must consider “whether pursuing one client’s objectives will prevent the lawyer from pursuing another client’s objectives, and whether confidentiality may be compromised.”¹²

- **Act in a culturally competent manner and with regard to the socioeconomic position of the parent throughout all aspects of representation.**

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Action: The parent’s attorney should learn about and understand the client’s background, determine how that has an impact on the client’s case, and always show the parent respect. The attorney must understand how cultural and socioeconomic differences impact interaction with clients, and must interpret the client’s words and actions accordingly.

Commentary: The child welfare system is comprised of a diverse group of people, including the clients and professionals involved. Each person comes to this system with his or her own set of values and expectations, but it is essential that each person try to learn about and understand the backgrounds of others. An individual’s race, ethnicity, gender, sexual orientation and socioeconomic position all have an impact on how the person acts and reacts in particular situations. The parent’s attorney must be vigilant against imposing the attorney’s values onto the clients, and should, instead, work with the parents within the context of their culture and socioeconomic position. While the court and child welfare agency have expectations of parents in their treatment of children, the parent’s advocate must strive to explain these expectations to the clients in a sensitive way. The parent’s attorney should also try to explain how the client’s background might affect the client’s ability to comply with court orders and agency requests.

- **Take diligent steps to locate and communicate with a missing parent and decide representation strategies based on that communication.**¹³

Action: Upon accepting an appointment, the parent’s attorney should communicate to the client the importance of staying in contact with the attorney. While the attorney must communicate regularly with the client, and be informed of the client’s wishes before a hearing, the client also must keep in contact with the attorney. At the beginning of the representation, the attorney should tell the client how to contact the attorney, and discuss the importance of the client keeping the attorney informed of changes in address, phone numbers, and the client’s current whereabouts.

The parent’s attorney should attempt to locate and communicate with missing parents to formulate what positions the attorney should take at hearings, and to understand what information the client wishes the attorney to share with the child welfare agency and the court. If, after diligent steps, the attorney is unable to communicate with the client, the attorney should assess whether the client’s interests are better served by advocating for

the client's last clearly articulated position, or declining to participate in further court proceedings, and should act accordingly. After a prolonged period without contact with the client, the attorney should consider withdrawing from representation.

Commentary:

Diligent Steps to Locate: To represent a client adequately, the attorney must know what the client wishes. It is, therefore, important for parents' attorneys to take diligent steps to locate missing clients. Diligent steps can include speaking with the client's family, the caseworker, the foster care provider and other service providers. It should include contacting the State Department of Corrections, Social Security Administration, and

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Child Support Office, and sending letters by regular and certified mail to the client's last known address. The attorney should also visit the client's last known address and asking anyone who lives there for information about the client's whereabouts. Additionally, the attorney should leave business cards with contact information with anyone who might have contact with the client as long as this does not compromise confidentiality.

Unsuccessful Efforts to Locate: If the attorney is unable to find and communicate with the client after initial consultation, the attorney should assess what action would best serve the client's interests. This decision must be made on a case-by-case basis. In some cases, the attorney may decide to take a position consistent with the client's last clearly articulated position. In other cases the client's interests may be better served by the attorney declining to participate in the court proceedings in the absence of the client because that may better protect the client's right to vacate orders made in the client's absence.

- **Be aware of the unique issues an incarcerated parent faces and provide competent representation to the incarcerated client.**

Action:

Adoption and Safe Families Act (ASFA) Issues: The parent's attorney must be particularly diligent when representing an incarcerated parent. The attorney must be aware of the reasons for the incarceration. If the parent is incarcerated as a result of an act against the child or another child in the family, the child welfare agency may request an order from the court that reasonable efforts toward reunification are not necessary and attempt to fast-track the case toward other permanency goals. If this is the case, the attorney must be prepared to argue against such a motion, if the client opposes it. Even if no motion is made to waive the reasonable efforts requirement, in some jurisdictions the agency may not have the same obligations to assist parents who are incarcerated. Attorneys should counsel the client as to any effects incarceration has on the agency's obligations and know the jurisdiction's statutory and case law concerning incarceration as a basis for TPR. The attorney should help the client identify potential kinship placements, relatives who can provide care for the child while the parent is incarcerated. States vary in whether and how they weigh factors such as the reason for incarceration, length of incarceration and the child's age at the time of

incarceration when considering TPR. Attorneys must understand the implications of ASFA for an incarcerated parent who has difficulty visiting and planning for the child.

Services: Obtaining services such as substance abuse treatment, parenting skills, or job training while in jail or prison is often difficult. The parent's attorney may need to advocate for reasonable efforts to be made for the client, and assist the parent and the agency caseworker in accessing services. The attorney must assist the client with these services. Without services, it is unlikely the parent will be reunified with the child upon discharge from prison.

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If the attorney practices in a jurisdiction that has a specialized unit for parents and children, and especially when the client is incarcerated for an offense that is unrelated to the child, the attorney should advocate for such a placement. The attorney must learn about available resources, contact the placements and attempt to get the support of the agency and child's attorney.

Communication: The parent's attorney should counsel the client on the importance of maintaining regular contact with the child while incarcerated. The attorney should assist in developing a plan for communication and visitation by obtaining necessary court orders and working with the caseworker as well as the correctional facility's social worker.

If the client cannot meet the attorney before court hearings, the attorney must find alternative ways to communicate. This may include visiting the client in prison or engaging in more extensive phone or mail contact than with other clients. The attorney should be aware of the challenges to having a confidential conversation with the client, and attempt to resolve that issue.

The parent's attorney should also communicate with the parent's criminal defense attorney. There may be issues related to self-incrimination as well as concerns about delaying the abuse and neglect case to strengthen the criminal case or vice versa.

Appearance in Court: The client's appearance in court frequently raises issues that require the attorney's attention in advance. The attorney should find out from the client if the client wants to be present in court. In some prisons, inmates lose privileges if they are away from the prison, and the client may prefer to stay at the prison. If the client wants to be present in court, the attorney should work with the court to obtain a writ of habeas corpus/bring-down order/order to produce or other documentation necessary for the client to be transported from the prison. The attorney should explain to any client hesitant to appear, that the case will proceed without the parent's presence and raise any potential consequences of that choice. If the client does not want to be present, or if having the client present is not possible, the attorney should be educated about what means are available to have the client participate, such as by telephone or video conference. The attorney should make the necessary arrangements for the client. Note

that it may be particularly difficult to get a parent transported from an out-of-state prison or a federal prison.

- **Be aware of the client's mental health status and be prepared to assess whether the parent can assist with the case.**

Action: Attorneys representing parents must be able to determine whether a client's mental status (including mental illness and mental retardation) interferes with the client's ability to make decisions about the case. The attorney should be familiar with any mental health diagnosis and treatment that a client has had in the past or is presently undergoing (including any medications for such conditions). The attorney should get consent from the client to review mental health records and to speak with former and current mental

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health providers. The attorney should explain to the client that the information is necessary to understand the client's capacity to work with the attorney. If the client's situation seems severe, the attorney should also explain that the attorney may seek the assistance of a clinical social worker or some other mental health expert to evaluate the client's ability to assist the attorney because if the client does not have that capacity, the attorney may have to ask that a guardian ad litem be appointed to the client. Since this action may have an adverse effect on the client's legal claims, the attorney should ask for a GAL only when absolutely necessary.

Commentary: Many parents charged with abuse and neglect have serious or long-standing mental health challenges. However, not all of those conditions or diagnoses preclude the client from participating in the defense. Whether the client can assist counsel is a different issue from whether the client is able to parent the children, though the condition may be related to ability to parent. While the attorney is not expected to be a mental health expert, the attorney should be familiar with mental health conditions and should review such records carefully. The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. If the client seems unable to assist the attorney in case preparation, the attorney should seek an assessment of the client's capacity from a mental health expert. If the expert and attorney conclude that the client is not capable of assisting in the case, the attorney should inform the client that the attorney will seek appointment of a guardian ad litem from the court. The attorney should be careful to explain that the attorney will still represent the client in the child protective case. The attorney must explain to the client that appointment of a GAL will limit the client's decision-making power. The GAL will stand in the client's shoes for that purpose.

Investigation¹⁴

- **Conduct a thorough and independent investigation at every stage of the proceeding.**

Action: The parent's attorney must take all necessary steps to prepare each case. A thorough investigation is an essential element of preparation. The parent's attorney can

not rely solely on what the agency caseworker reports about the parent. Rather, the attorney should contact service providers who work with the client, relatives who can discuss the parent's care of the child, the child's teacher or other people who can clarify information relevant to the case. If necessary, the attorney should petition the court for funds to hire an investigator.

Commentary: In some jurisdictions, parents' attorneys work with social workers or investigators who can meet with clients and assist in investigating the underlying issues that arise as cases proceed. The drafting committee recommends such a model of representation. However, if the attorney is not working with such a team, the attorney is still responsible for gaining all pertinent case information.

- **Interview the client well before each hearing, in time to use client information for the case investigation.**¹⁵

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Action: The parent's attorney should meet with the parent regularly throughout the case. The meetings should occur well before the hearing, not at the courthouse just minutes before the case is called before the judge. The attorney should ask the client questions to obtain information to prepare the case, and strive to create a comfortable environment so the client can ask the attorney questions. The attorney should use these meetings to prepare for court as well as to counsel the client concerning issues that arise during the course of the case. Information obtained from the client should be used to propel the investigation.

Commentary: Often, the client is the best source of information for the attorney, and the attorney should set aside time to obtain that information. Since the interview may involve disclosure of sensitive or painful information, the attorney should explain attorney-client confidentiality to the client. The attorney may need to work hard to gain the client's trust, but if a trusting relationship can be developed, the attorney will have an easier time representing the client. The investigation will be more effective if guided by the client, as the client generally knows firsthand what occurred in the case.

Informal Discovery¹⁶

- **Review the child welfare agency case file.**

Action: The parent's attorney should ask for and review the agency case file as early during the course of representation as possible. The file contains useful documents that the attorney may not yet have, and will instruct the attorney on the agency's case theory. If the agency case file is inaccurate, the attorney should seek to correct it. The attorney must read the case file periodically because information is continually being added by the agency.

Commentary: While an independent investigation is essential, it is also important that the parent's attorney understands what information the agency is relying on to further its case. The case file should contain a history about the family that the client may not have

shared, and important reports and information about both the child and parent that will be necessary for the parent's attorney to understand for hearings as well as settlement conferences. Unless the attorney also has the information the agency has, the parent's attorney will walk into court at a disadvantage.

- **Obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers.**

Action: As part of the discovery phase, the parent's attorney should gather all relevant documentation regarding the case that might shed light on the allegations, the service plan and the client's strengths as a parent. The attorney should not limit the scope as information about past or present criminal, protection from abuse, private custody or

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administrative proceedings involving the client can have an impact on the abuse and neglect case. The attorney should also review the following kinds of documents:

- social service records
- court records
- medical records
- school records
- evaluations of all types

The attorney should be sure to obtain reports and records from service providers.

Discovery is not limited to information regarding the client, but may include records of others such as the other parent, stepparent, child, relative and non-relative caregivers.

Commentary: In preparing the client's case, the attorney must try to learn as much about the parent and the family as possible. Various records may contradict or supplement the agency's account of events. Gathering documentation to verify the client's reports about what occurred before the child came into care and progress the parent is making during the case is necessary to provide concrete evidence for the court. Documentation may also alert the attorney to issues the client is having that the client did not share with counsel. The attorney may be able to intercede and assist the client with service providers, agency caseworkers and others.

Formal Discovery¹⁷

- **When needed, use formal discovery methods to obtain information.**

Action: The parent's attorney should know what information is needed to prepare for the case and understand the best methods of obtaining that information. The attorney should become familiar with the pretrial requests and actions used in the jurisdiction and use whatever tools are available to obtain necessary information. The parent's attorney should consider the following types of formal discovery: depositions, interrogatories (including expert interrogatories), requests for production of documents, requests for

admissions, and motions for mental or physical examination of a party. The attorney should file timely motions for discovery and renew these motions as needed to obtain the most recent records.

The attorney should, consistent with the client's interests and goals, and where appropriate, take all necessary steps to preserve and protect the client's rights by opposing discovery requests of other parties.

Court Preparation¹⁸

- **Develop a case theory and strategy to follow at hearings and negotiations.**

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Action: Once the parent's attorney has completed the initial investigation and discovery, including interviews with the client, the attorney should develop a strategy for representation. The strategy may change throughout the case, as the client makes or does not make progress, but the initial theory is important to assist the attorney in staying focused on the client's wishes and on what is achievable. The theory of the case should inform the attorney's preparation for hearings and arguments to the court throughout the case. It should also help the attorney decide what evidence to develop for hearings and the steps to take to move the case toward the client's ultimate goals (e.g., requesting increased visitation when a parent becomes engaged in services).

- **Timely file all pleadings, motions, and briefs. Research applicable legal issues and advance legal arguments when appropriate.**

Action: The attorney must file petitions, motions, discovery requests, and responses and answers to pleadings filed by other parties that are appropriate for the case. These pleadings must be thorough, accurate and timely.

When a case presents a complicated or new legal issue, the parent's attorney should conduct the appropriate research before appearing in court. The attorney must have a solid understanding of the relevant law, and be able to present it to the judge in a compelling and convincing way. The attorney should be prepared to distinguish case law that appears to be unfavorable. If the judge asks for memoranda of law, the attorney will already have done the research and will be able to use it to argue the case well. If it would advance the client's case, the parent's attorney should present an unsolicited memorandum of law to the court.

Commentary: Actively filing motions, pleadings and briefs benefits the client. This practice puts important issues before the court and builds credibility for the attorney. In addition to filing responsive papers and discovery requests, the attorney should proactively seek court orders that benefit the client, e.g., filing a motion to enforce court orders to ensure the child welfare agency is meeting its reasonable efforts obligations.

When an issue arises, it is often appropriate to attempt to resolve it informally with other parties. When out-of-court advocacy is not successful, the attorney should not wait to bring the issue to the court's attention if that would serve the client's goals.

Arguments in child welfare cases are often fact-based. Nonetheless, attorneys should ground their arguments in statutory, regulatory and common law. These sources of law exist in each jurisdiction, as well as in federal law. Additionally, law from other jurisdictions can be used to sway a court in the client's favor. An attorney who has a firm grasp of the law, and who is willing to do legal research on an individual case, may have more credibility before the court. At times, competent representation requires advancing legal arguments that are not yet accepted in the jurisdiction. Attorneys should be mindful to preserve issues for appellate review by making a record even if the argument is unlikely to prevail at the trial level

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- **Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.**

Action: The parent's attorney must advocate for the client both in and out of court. The parent's attorney should know about the social, mental health, substance abuse treatment and other services that are available to parents and families in the jurisdiction in which the attorney practices so the attorney can advocate effectively for the client to receive these services. The attorney should ask the client if the client wishes to engage in services. If so, the attorney must determine whether the client has access to the necessary services to overcome the issues that led to the case.

The attorney should actively engage in case planning, including attending major case meetings, to ensure the client asks for and receives the needed services. The attorney should also ensure the client does not agree to undesired services that are beyond the scope of the case. A major case meeting is one in which the attorney or client believes the attorney will be needed to provide advice or one in which a major decision on legal steps, such as a change in the child's permanency goal, will be made. The attorney should be available to accompany the client to important meetings with service providers as needed.

The services in which the client is involved must be tailored to the client's needs, and not merely hurdles over which the client must jump (e.g., if the client is taking parenting classes, the classes must be relevant to the underlying issue in the case).

Whenever possible, the parent's attorney should engage or involve a social worker as part of the parent's "team" to help determine an appropriate case plan, evaluate social services suggested for the client, and act as a liaison and advocate for the client with the service providers.

When necessary, the parent's attorney should seek court orders to force the child welfare agency to provide services or visitation to the client. The attorney may need to ask the court to enforce previously entered orders that the agency did not comply with in a

reasonable period. The attorney should consider whether the child's representative (lawyer, GAL or CASA) might be an ally on service and visitation issues. If so, the attorney should solicit the child's representative's assistance and work together in making requests to the agency and the court.

Commentary: For a parent to succeed in a child welfare case the parent must receive and cooperate with social services. It is therefore necessary that the parent's attorney does whatever possible to obtain appropriate services for the client, and then counsel the client about participating in such services. Examples of services common to child welfare cases include:

- Evaluations
- Family preservation or reunification services
- Medical and mental health care
- Drug and alcohol treatment
- Domestic violence prevention, intervention or treatment

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- Parenting education
- Education and job training
- Housing
- Child care
- Funds for public transportation so the client can attend services

- **Aggressively advocate for regular visitation in a family-friendly setting.**

Action: The parent's attorney should advocate for an effective visiting plan and counsel the parent on the importance of regular contact with the child. Preservation of parent-child bonds through regular visitation is essential to any reunification effort. Courts and child welfare agencies may need to be pushed to develop visiting plans that best fit the needs of the individual family. Factors to consider in visiting plans include:

- Frequency
- Length
- Location
- Supervision
- Types of activities
- Visit coaching – having someone at the visit who could model effective parenting skills

Commentary: Consistent, high quality visitation is one of the best predictors of successful reunification between a parent and child. Often visits are arranged in settings that are uncomfortable and inhibiting for families. It is important that the parent's attorney seek a visitation order that will allow the best possible visitation. Effort should be made to have visits be unsupervised or at the lowest possible level of supervision. Families are often more comfortable when relatives, family friends, clergy or other community members are recruited to supervise visits rather than caseworkers. Attorneys should advocate for visits

to occur in the most family-friendly locations possible, such as in the family's home, parks, libraries, restaurants, places of worship or other community venues.

- **With the client's permission, and when appropriate, engage in settlement negotiations and mediation to resolve the case.**

Action: The parent's attorney should, when appropriate, participate in settlement negotiations to promptly resolve the case, keeping in mind the effect of continuances and delays on the client's goals. Parents' attorneys should be trained in mediation and negotiation skills and be comfortable resolving cases outside a courtroom setting when consistent with the client's position. When authorized to do so by the client, the parent's attorney should share information about services in which the parent is engaged and provide copies of favorable reports from service providers. This information may impact settlement discussions. The attorney must communicate all settlement offers to the client and discuss their advantages and disadvantages. It is the client's decision whether to settle. The attorney must be willing to try the case and not compromise solely to avoid the hearing. The attorney should use mediation resources when available.

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Commentary: Negotiation and mediation often result in a detailed agreement among parties about actions the participants must take. Generally, when agreements have been thoroughly discussed and negotiated, all parties, including the parents, feel as if they had a say in the decision and are, therefore, more willing to adhere to a plan. Mediation can resolve a specific conflict in a case, even if it does not result in an agreement about the entire case. Negotiated settlements generally happen more quickly than full hearings and therefore move a case along swiftly. The attorney should discuss all aspects of proposed settlements with the parent, including all legal effects of admissions or agreements. The attorney should advise the client about the chances of prevailing if the matter proceeds to trial and any potential negative impact associated with contesting the allegations. The final decision regarding settlement must be the client's.

A written, enforceable agreement should result from any settlement, so all parties are clear about their rights and obligations. The parent's attorney should ensure agreements accurately reflect the understandings of the parties. The parent's attorney should schedule a hearing if promises made to the parent are not kept.

- **Thoroughly prepare the client to testify at the hearing.**

Action: When having the client testify will benefit the case or when the client wishes to testify, the parent's attorney should thoroughly prepare the client. The attorney should discuss and practice the questions that the attorney will ask the client, as well as the types of questions the client should expect opposing counsel to ask. The parent's attorney should help the parent think through the best way to present information, familiarize the parent with the court setting, and offer guidance on logistical issues such as how to get to court on time and appropriate court attire.

Commentary: Testifying in court can be intimidating. For a parent whose family is the focus of the proceeding, the court experience is even scarier. The parent's attorney should be attuned to the client's comfort level about the hearing, and ability to testify in the case. The attorney should spend time explaining the process and the testimony itself to the client. The attorney should provide the client with a written list of questions that the attorney will ask, if this will help the client.

- **Identify, locate and prepare all witnesses.**

Action: The parent's attorney, in consultation with the parent, should develop a witness list well before a hearing. The attorney should not assume the agency will call a witness, even if the witness is named on the agency's witness list. The attorney should, when possible, contact the potential witnesses to determine if they can provide helpful testimony.

When appropriate, witnesses should be informed that a subpoena is on its way. The attorney should also ensure the subpoena is served. The attorney should subpoena potential agency witnesses (e.g., a previous caseworker) who have favorable information about the client.

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The attorney should set aside time to fully prepare all witnesses in person before the hearing. The attorney should remind the witnesses about the court date.

Commentary: Preparation is the key to successfully resolving a case, either in negotiation or trial. The attorney should plan as early as possible for the case and make arrangements accordingly. Witnesses may have direct knowledge of the allegations against the parent. They may be service providers working with the parent, or individuals from the community who could testify generally about the family's strengths.

When appropriate, the parent's attorney should consider working with other parties who share the parent's position (such as the child's representative) when creating a witness list, issuing subpoenas, and preparing witnesses. Doctors, nurses, teachers, therapists, and other potential witnesses have busy schedules and need advance warning about the date and time of the hearing.

Witnesses are often nervous about testifying in court. Attorneys should prepare them thoroughly so they feel comfortable with the process. Preparation will generally include rehearsing the specific questions and answers expected on direct and anticipating the questions and answers that might arise on cross-examination. Attorneys should provide written questions for those witnesses who need them.

- **Identify, secure, prepare and qualify expert witness when needed. When permissible, interview opposing counsel's experts.**

Action: Often a case requires multiple experts in different roles, such as experts in medicine, mental health treatment, drug and alcohol treatment, or social work. Experts may be needed for ongoing case consultation in addition to providing testimony at trial. The attorney should consider whether the opposing party is calling expert witnesses and determine whether the parent needs to call any experts.

When expert testimony is required, the attorney should identify the qualified experts and seek necessary funds to retain them in a timely manner. The attorney should subpoena the witnesses, giving them as much advanced notice of the court date as possible. As is true for all witnesses, the attorney should spend as much time as possible preparing the expert witnesses for the hearing. The attorney should be competent in qualifying expert witnesses.

When opposing counsel plans to call expert witnesses, the parent's attorney should file expert interrogatories, depose the witnesses or interview the witnesses in advance, depending on the jurisdiction's rules on attorney work product. The attorney should do whatever is necessary to learn what the opposing expert witnesses will say about the client during the hearing.

Commentary: By contacting opposing counsel's expert witnesses in advance, the parent's attorney will know what evidence will be presented against the client and whether the

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expert has any favorable information that might be elicited on cross-examination. The attorney will be able to discuss the issues with the client, prepare a defense and call experts on behalf of the client, if appropriate. Conversely, if the attorney does not talk to the opposing expert in advance, the attorney could be surprised by the evidence and unable to represent the client competently.

Hearings

- **Attend and prepare for all hearings, including pretrial conferences.**

Action: The parent's attorney must prepare for, and attend all hearings and participate in all telephone and other conferences with the court.

Commentary: For the parent to have a fair chance during the hearing, the attorney must be prepared and present in court. Participating in pretrial proceedings may improve case resolution for the parent. Counsel's failure to participate in the proceedings in which all other parties are represented may disadvantage the parent. Therefore, the parent's attorney should be actively involved in this stage. Other than in extraordinary circumstances, attorneys must appear for all court appearances on time. In many jurisdictions, if an attorney arrives to court late, or not at all, the case will receive a long continuance. This does not serve the client and does not instill confidence in the attorney. If an attorney has a conflict with another courtroom appearance, the attorney should notify the court and other parties and request a short continuance. The parent's attorney

should not have another attorney stand in to represent the client in a substantive hearing, especially if the other attorney is unfamiliar with the client or case.

- **Prepare and make all appropriate motions and evidentiary objections.**

Action: The parent's attorney should make appropriate motions and evidentiary objections to advance the client's position during the hearing. If necessary, the attorney should file briefs in support of the client's position on motions and evidentiary issues. The parent's attorney should always be aware of preserving legal issues for appeal.

Commentary: It is essential that parents' attorneys understand the applicable rules of evidence and all court rules and procedures. The attorney must be willing and able to make appropriate motions, objections, and arguments (e.g., objecting to the qualification of expert witnesses or raising the issue of the child welfare agency's lack of reasonable efforts).

- **Present and cross-examine witnesses, prepare and present exhibits.**

Action: The parent's attorney must be able to present witnesses effectively to advance the client's position. Witnesses must be prepared in advance and the attorney should know what evidence will be presented through the witnesses. The attorney must also be skilled at cross-examining opposing parties' witnesses. The attorney must know how to offer documents, photos and physical objects into evidence.

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At each hearing the attorney should keep the case theory in mind, advocate for the child to return home and for appropriate services, if that is the client's position, and request that the court state its expectations of all parties.

Commentary: Becoming a strong courtroom attorney takes practice and attention to detail. The attorney must be sure to learn the rules about presenting witnesses, impeaching testimony, and entering evidence. The attorney should seek out training in trial skills and observe more experienced trial attorneys to learn from them. Even if the parent's attorney is more seasoned, effective direct and cross-examination require careful preparation. The attorney must know the relevant records well enough to be able to impeach adverse witnesses and bring out in both direct and cross examinations any information that would support the parent's position. Seasoned attorneys may wish to consult with other experienced attorneys about complex cases. Presenting and cross-examining witnesses are skills with which the parent's attorney must be comfortable.

- **In jurisdictions in which a jury trial is possible, actively participate in jury selection and drafting jury instructions.**

Commentary: Several jurisdictions around the country afford parties in child welfare cases the right to a jury trial at the adjudicatory or termination of parental rights stages. Parents' attorneys in those jurisdictions should be skilled at choosing an appropriate jury,

drafting jury instructions that are favorable to the client's position, and trying the case before jurors who may not be familiar with child abuse and neglect issues.

- **Request closed proceedings (or a cleared courtroom) in appropriate cases.**

Action: The parent's attorney should be aware of who is in the courtroom during a hearing, and should request the courtroom be cleared of individuals not related to the case when appropriate. The attorney should be attuned to the client's comfort level with people outside of the case hearing about the client's family. The attorney should also be aware of whether the case is one in which there is media attention. Confidential information should not be discussed in front of the media or others without the express permission of the client.

Commentary: In many courts, even if they have a "closed court" policy, attorneys, caseworkers, and witnesses on other cases listed that day may be waiting in the courtroom. These individuals may make the client uncomfortable, and the parent's attorney should request that the judge remove them from the courtroom. Even in an "open court" jurisdiction, there may be cases, or portions of cases, that outsiders should not be permitted to hear. The parent's attorney must be attuned to this issue, and make appropriate requests of the judge.

- **Request the opportunity to make opening and closing arguments.**

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Action: When permitted by the judge, the parent's attorney should make opening and closing arguments to best present the parent's attorney's theory of the.

Commentary: In many child abuse and neglect proceedings, attorneys waive the opportunity to make opening and closing arguments. However, these arguments can help shape the way the judge views the case, and therefore can help the client. Argument may be especially critical, for example, in complicated cases when information from expert witnesses should be highlighted for the judge, in hearings that take place over a number of days, or when there are several children and the agency is requesting different services or permanency goals for each of them. Making opening and closing argument is particularly important if the case is being heard by a jury.

- **Prepare proposed findings of fact, conclusions of law and orders when they will be used in the court's decision or may otherwise benefit the client.**

Action: Proposed findings of fact, conclusions of law, and orders should be prepared before a hearing. When the judge is prepared to enter a ruling, the judge can use the proposed findings or amend them as needed.

Commentary: By preparing proposed findings of fact and conclusions of law, the parent's attorney frames the case and ruling for the judge. This may result in orders that are more favorable to the parent, preserve appellate issues, and help the attorney clarify desired

outcomes before a hearing begins. The attorney should offer to provide the judge with proposed findings and orders in electronic format. If an opposing party prepared the order, the parent's attorney should review it for accuracy before the order is submitted for the judge's signature.

Post Hearings/Appeals

- **Review court orders to ensure accuracy and clarity and review with client.**

Action: After the hearing, the parent's attorney should review the written order to ensure it reflects the court's verbal order. If the order is incorrect, the attorney should take whatever steps are necessary to correct it. Once the order is final, the parent's attorney should provide the client with a copy of the order and should review the order with the client to ensure the client understands it. If the client is unhappy with the order, the attorney should counsel the client about any options to appeal or request rehearing on the order, but should explain that the order is in effect unless a stay or other relief is secured. The attorney should counsel the client on the potential consequences of failing to comply with a court order.

Commentary: The parent may be angry about being involved in the child welfare system, and a court order that is not in the parent's favor could add stress and frustration. It is essential that the parent's attorney take time, either immediately after the hearing or at a meeting soon after the court date, to discuss the hearing and the outcome with the client. The attorney should counsel the client about all options, including appeal (see below).

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Regardless of whether an appeal is appropriate, the attorney should counsel the parent about potential consequences of not complying with the order.

- **Take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court.**

Action: The parent's attorney should answer the parent's questions about obligations under the order and periodically check with the client to determine the client's progress in implementing the order. If the client is attempting to comply with the order but other parties, such as the child welfare agency, are not meeting their responsibilities, the parent's attorney should approach the other party and seek assistance on behalf of the client. If necessary, the attorney should bring the case back to court to review the order and the other party's noncompliance or take other steps to ensure that appropriate social services are available to the client.

Commentary: The parent's attorney should play an active role in assisting the client in complying with court orders and obtaining visitation and any other social services. The attorney should speak with the client regularly about progress and any difficulties the client is encountering while trying to comply with the court order or service plan. When the child welfare agency does not offer appropriate services, the attorney should consider making referrals to social service providers and, when possible, retaining a social worker

to assist the client. The drafting committee of these standards recommends such an interdisciplinary model of practice.

- **Consider and discuss the possibility of appeal with the client.**¹⁹

Action: The parent's attorney should consider and discuss with the client the possibility of appeal when a court's ruling is contrary to the client's position or interests. The attorney should counsel the client on the likelihood of success on appeal and potential consequences of an appeal. In most jurisdictions, the decision whether to appeal is the client's as long as a non-frivolous legal basis for appeal exists. Depending on rules in the attorney's jurisdiction, the attorney should also consider filing an extraordinary writ or motions for other post-hearing relief.

Commentary: When discussing the possibility of an appeal, the attorney should explain both the positive and negative effects of an appeal, including how the appeal could affect the parent's goals. For instance, an appeal could delay the case for a long time. This could negatively impact both the parent and the child.

- **If the client decides to appeal, timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal and closely follow the jurisdiction's Rules of Appellate Procedure.**

Action: The parent's attorney should carefully review his or her obligations under the state's Rules of Appellate Procedure. The attorney should timely file all paperwork, including a notice of appeal and requests for stays of the trial court order, transcript, and

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case file. If another party has filed an appeal, the parent's attorney should explain the appeals process to the parent and ensure that responsive papers are filed timely.

The appellate brief should be clear, concise, and comprehensive and also timely filed. The brief should reflect all relevant case law and present the best legal arguments available in state and federal law for the client's position. The brief should include novel legal arguments if there is a chance of developing favorable law in support of the parent's claim.

In jurisdictions in which a different attorney from the trial attorney handles the appeal, the trial attorney should take all steps necessary to facilitate appointing appellate counsel and work with the new attorney to identify appropriate issues for appeal. The attorney who handled the trial may have insight beyond what a new attorney could obtain by reading the trial transcript.

If appellate counsel differs from the trial attorney, the appellate attorney should meet with the client as soon as possible. At the initial meeting, appellate counsel should determine the client's position and goals in the appeal. Appellate counsel should not be bound by the determinations of the client's position and goals made by trial counsel and should independently determine his or her client's position and goals on appeal.

If oral arguments are scheduled, the attorney should be prepared, organized, and direct. Appellate counsel should inform the client of the date, time and place scheduled for oral argument of the appeal upon receiving notice from the appellate court. Oral argument of the appeal on behalf of the client should not be waived, absent the express approval of the client, unless doing so would benefit the client. For example, in some jurisdictions appellate counsel may file a reply brief instead of oral argument. The attorney should weigh the pros and cons of each option.

Commentary: Appellate skills differ from the skills most trial attorneys use daily. The parent's attorney may wish to seek training on appellate practice and guidance from an experienced appellate advocate when drafting the brief and preparing for argument. An appeal can have a significant impact on the trial judge who heard the case and trial courts throughout the state, as well as the individual client and family.

- **Request an expedited appeal, when feasible, and file all necessary paperwork while the appeal is pending.**

Action: If the state court allows, the attorney in a child welfare matter should always consider requesting an expedited appeal. In this request, the attorney should provide information about why the case should be expedited, such as any special characteristics about the child and why delay would harm the relationship between the parent and child.

- **Communicate the results of the appeal and its implications to the client.**

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Action: The parent's attorney should communicate the result of the appeal and its implications, and provide the client with a copy of the appellate decision. If, as a result of the appeal, the attorney needs to file any motions with the trial court, the attorney should do so.

Obligations of Attorney Managers²⁰

Attorney Managers are urged to:

9. **Clarify attorney roles and expectations.**

Action: The attorney manager must ensure that staff attorneys understand their role in representing clients and the expectations of the attorney manager concerning all staff duties. In addition to in-office obligations staff attorneys may attend meetings, conferences, and trainings. The attorney may need to attend child welfare agency or service provider meetings with clients. The manager should articulate these duties at the beginning of and consistently during the attorney's employment. The manager should emphasize the attorney's duties toward the client, and obligations to comply with practice standards.

Commentary: All employees want to know what is expected of them; one can only do a high quality job when the person knows the parameters and expectations of the position. Therefore, the attorney manager must consistently inform staff of those expectations. Otherwise, the staff attorney is set up to fail. The work of representing parents is too important, and too difficult, to be handled by people who do not understand their role and lack clear expectations. These attorneys need the full support of supervisors and attorney managers to perform their highest quality work.

10. **Determine and set reasonable caseloads for attorneys.**²¹

Action: An attorney manager should determine reasonable caseloads for parents' attorneys and monitor them to ensure the maximum is not exceeded. Consider a caseload/workload study, review written materials about such studies, or look into caseload sizes in similar counties to accurately determine ideal attorney caseloads. When assessing the appropriate number of cases, remember to account for all attorney obligations, case difficulty, time required to prepare a case thoroughly, support staff assistance, travel time, experience level of attorneys, and available time (excluding vacation, holidays, sick leave, training and other non-case-related activity). If the attorney manager carries a caseload, the number of cases should reflect the time the individual spends on management duties.

Commentary: High caseload is considered a major barrier to quality representation and a source of high attorney turnover. It is essential to decide what a reasonable caseload is in your jurisdiction. How attorneys define cases and attorney obligations vary from place-to-place, but having a manageable caseload is crucial. The standards drafting committee recommended a caseload of no more than 50-100 cases depending on what the attorney can handle competently and fulfill these standards. The type of practice the attorney has,

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e.g., whether the attorney is part of a multidisciplinary representation team also has an impact on the appropriate caseload size. It is part of the attorney manager's job to advocate for adequate funding and to alert individuals in positions of authority when attorneys are regularly asked to take caseloads that exceed local standards.

11. **Advocate for competitive salaries for staff attorneys.**

Action: Attorney managers should advocate for attorney salaries that are competitive with other government and court appointed attorneys in the jurisdiction. To recruit and retain experienced attorneys, salaries must compare favorably with similarly situated attorneys.

Commentary: While resources are scarce, parents' attorneys deserve to be paid a competitive wage. They will likely not stay in their position nor be motivated to work hard without a reasonable salary. High attorney turnover may decrease when attorneys are paid well. Parents' rights to effective assistance of counsel may be compromised if parents' attorneys are not adequately compensated.

12. **Develop a system for the continuity of representation.**

Action: The attorney manager should develop a case assignment system that fosters ownership and involvement in the case by the parent's attorney. The office can have a one-attorney: one-case (vertical representation) policy in which an attorney follows the case from initial filing through permanency and handles all aspects of the case. Alternatively, the cases may be assigned to a group of attorneys who handle all aspects of a case as a team and are all assigned to one judge. If a team approach is adopted, it is critical to establish mechanisms to aid communication about cases and promote accountability.

The attorney manager should also hire social workers, paralegals and/or parent advocates (parents familiar with the child welfare system because they were involved in the system and successfully reunited with their child), who should be "teamed" with the attorneys. These individuals can assist the attorney or attorney team with helping clients access services and information between hearings, and help the attorney organize and monitor the case.

Commentary: Parents' attorneys can provide the best representation for the client when they know a case and are invested in its outcome. Continuity of representation is critical for attorneys and parents to develop the trust that is essential to high quality representation. Additionally, having attorneys who are assigned to particular cases decreases delays because the attorney does not need to learn the case each time it is scheduled for court, but rather has extensive knowledge of the case history. The attorney also has the opportunity to monitor action on the case between court hearings. This system also makes it easier for the attorney manager to track how cases are handled. Whatever system is adopted, the manager must be clear about which attorney has

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responsibility for the case preparation, monitoring, and advocacy required throughout the case.

13. **Provide attorneys with training and education opportunities regarding the special issues that arise in the client population.**

Action: The attorney manager must ensure that each attorney has opportunities to participate in training and education programs. When a new attorney is hired, the attorney manager should assess that attorney's level of experience and readiness to handle cases. The attorney manager should develop an internal training program that pairs the new attorney with an experienced "attorney mentor." The new attorney should be required to:

- observe each type of court proceeding (and mediation if available in the jurisdiction),
- second-chair each type of proceeding, 3) try each type of case with the mentor second-chairing, and 4) try each type of proceeding on his or her own, with the mentor available to assist, before the attorney can begin handling cases alone.

Additionally, each attorney should attend at least 20 hours of relevant training before beginning, and at least 15 hours of relevant training every year after. Training should

include general legal topics such as evidence and trial skills, and child welfare-specific topics that are related to the client population the office is representing, such as:

- Relevant state, federal and case law, procedures and rules
- Available community resources
- State and federal benefit programs affecting parties in the child welfare system (e.g., SSI, SSA, Medicaid, UCCJEA)
- Federal Indian Law including the Indian Child Welfare Act and state law related to Native Americans
- Understanding mental illness
- Substance abuse issues (including assessment, treatment alternatives, confidentiality, impact of different drugs)
- Legal permanency options
- Reasonable efforts
- Termination of parental rights law
- Child development
- Legal ethics related to parent representation
- Negotiation strategies and techniques
- Protection orders/how domestic violence impacts parties in the child welfare system
- Appellate advocacy
- Immigration law in child welfare cases
- Education law in child welfare cases
- Basic principles of attachment theory
- Sexual abuse
- Dynamics of physical abuse and neglect
- Y Shaken Baby Syndrome

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- Y Broken bones
- Y Burns
- Y Failure To Thrive
- Y Munchausen's Syndrome by Proxy
- Domestic relations law

Commentary: Parents' attorneys should be encouraged to learn as much as possible and participate in conferences and trainings to expand their understanding of child welfare developments. While parents' attorneys often lack extra time to attend conferences, the knowledge they gain will be invaluable. The philosophy of the office should stress the need for ongoing learning and professional growth. The attorney manager should require the attorneys to attend an achievable number of hours of training that will match the training needs of the attorneys. The court and Court Improvement Program²² may be able to defray costs of attorney training or may sponsor multidisciplinary training that parents' attorneys should be encouraged to attend. Similarly, state and local bar associations, area law schools or local Child Law Institutes may offer education opportunities. Attorneys should have access to professional publications to stay current on the law and promising

practices in child welfare. Child welfare attorneys benefit from the ability to strategize and share information and experiences with each other. Managers should foster opportunities for attorneys to support each other, discuss cases, and brainstorm regarding systemic issues and solutions.

14. Establish a regular supervision schedule.

Action: Attorney managers should ensure that staff attorneys meet regularly (at least once every two weeks) with supervising attorneys to discuss individual cases as well as any issues the attorney is encountering with the court, child welfare agency, service providers or others. The supervising attorney should help the staff attorney work through any difficulties the attorney is encountering in managing a caseload. Supervising attorneys should regularly observe the staff attorneys in court and be prepared to offer constructive criticism as needed. The supervising attorney should create an atmosphere in which the staff attorney is comfortable asking for help and sharing ideas.

Commentary: Parents' attorneys function best when they can learn, feel supported, and manage their cases with the understanding that their supervisors will assist as needed. By creating this office environment, the attorney manager invests in training high quality attorneys and results in long-term retention. Strong supervision helps attorneys avoid the burnout that could accompany the stressful work of representing parents in child welfare cases.

15. Create a brief and forms bank.

Action: Develop standard briefs, memoranda of law and forms that attorneys can use, so they do not "reinvent the wheel" for each new project. For example, there could be sample discovery request forms, motions, notices of appeal, and petitions. Similarly, memoranda of law and appellate briefs follow patterns that the attorneys could use,

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although these should always be tailored to the specific case. These forms and briefs should be available on the computer and in hard copy and should be centrally maintained. They should also be well indexed for accessibility and updated as needed.

16. Ensure the office has quality technical and support staff as well as adequate equipment, library materials, and computer programs to support its operations.

Action: The attorney manager should advocate for high quality technical and staff support. The office should employ qualified legal assistants or paralegals and administrative assistants to help the attorneys. The attorney manager should create detailed job descriptions for these staff members to ensure they are providing necessary assistance. For instance, a qualified legal assistant can help: research, draft petitions, schedule and prepare witnesses and more.

The attorney manager should ensure attorneys have access to working equipment, a user-friendly library conducive to research, and computer programs for word processing,

conducting research (Westlaw or Lexis/Nexis), caseload and calendar management, Internet access, and other supports that make the attorney's job easier and enhances client representation.

Commentary: By employing qualified staff, the attorneys will be free to perform tasks essential to quality representation. The attorneys must at least have access to a good quality computer, voice mail, fax machine, and copier to get the work done efficiently and with as little stress as possible

17. Develop and follow a recruiting and hiring practice focused on hiring highly qualified candidates.

Action: The attorney manager should hire the best attorneys possible. The attorney manager should form a hiring committee made up of managing and line attorneys and possibly a client or former client of the office. Desired qualities of a new attorney should be determined, focusing on educational and professional achievements; experience and commitment to representing parents and to the child welfare field; interpersonal skills; diversity and the needs of the office; writing and verbal skills; second language skills; and ability to handle pressure. Widely advertising the position will draw a wider candidate pool. The hiring committee should set clear criteria for screening candidates before interviews and should conduct thorough interviews and post-interview discussions to choose the candidate with the best skills and strongest commitment. Reference checks should be completed before extending an offer.

Commentary: Hiring high quality attorneys raises the level of representation and the level of services parents in the jurisdiction receive. The parent attorney's job is complicated and stressful. There are many tasks to complete in a short time. It is often difficult to connect with, build trust and represent the parent. New attorneys must be aware of these challenges and be willing and able to overcome them. Efforts should be made to recruit staff who reflect the racial, ethnic, and cultural backgrounds of the clients. It is

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particularly important to have staff who can communicate with the clients in their first languages, whenever possible.

18. Develop and implement an attorney evaluation process.

Action: The attorney manager should develop an evaluation system that focuses on consistency, constructive criticism, and improvement. Some factors to evaluate include: communicating with the client, preparation and trial skills, working with clients and other professionals, complying with practice standards, and ability to work within a team. During the evaluation process, the attorney manager should consider:

- observing the attorney in court;
- reviewing the attorney's files;
- talking with colleagues and clients, when appropriate, about the attorney's performance;

having the attorney fill out a self-evaluation; and;
meeting in person with the attorney.

Where areas of concern are noted, the evaluation process should identify and document specific steps to address areas needing improvement.

Commentary: A solid attorney evaluation process helps attorneys know what they should be working on, management's priorities, their strengths and areas for improvement. A positive process supports attorneys in their positions, empowers them to improve and reduces burnout.

19. Work actively with other stakeholders to improve the child welfare system, including court procedures.

Action: The attorney manager should participate, or designate someone from the staff to participate, in multidisciplinary committees within the jurisdiction that are focused on improving the local child welfare system. Examples of such committees include: addressing issues of disproportional representation of minorities in foster care, improving services for incarcerated parents, allowing parents pre-petition representation, drafting court rules and procedures, drafting protocols about outreach to missing parents and relatives, removing permanency barriers and delays, and accessing community-based services for parents and children. Similarly, the attorney manager should participate in, and strongly encourage staff participation in, multidisciplinary training.

Commentary: Working on systemic change with all stakeholders in the jurisdiction is one way to serve the parents the office represents as well as their children. Active participation of parents' attorneys ensures that projects and procedures are equitably developed, protect parents' interests, and the attorneys are more likely to work on them over the long term. Collaboration can, and generally does, benefit all stakeholders.

Role of the Court:

The court is urged to:

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○ **Recognize the importance of the parent attorney's role.**

Commentary: The judge sets the tone in the courtroom. Therefore, it is very important that the judge respects all parties, including the parents and parents' counsel. Representing parents is difficult and emotional work, but essential to ensuring justice is delivered in child abuse and neglect cases. When competent attorneys advocate for parent clients, the judge's job becomes easier. The judge is assured that the parties are presenting all relevant evidence, and the judge can make a well-reasoned decision that protects the parents' rights. Also, by respecting and understanding the parent attorney's role, the judge sets an example for others.

○ **Establish uniform standards of representation for parents' attorneys.**

Commentary: By establishing uniform representation rules or standards, the judge can put the parents' attorneys in the jurisdiction on notice that a certain level of representation will be required for the attorney to continue to receive appointments. The rules or standards should be jurisdiction specific, but should include the elements of these standards.

- **Ensure the attorneys who are appointed to represent parents in abuse and neglect cases are qualified, well-trained, and held accountable for practice that complies with these standards.**

Commentary: Once the standards are established, the court must hold all parents' attorneys accountable to them. A system should be developed that would delineate when an attorney would be removed from a case for failure to comply with the standards, and what actions, or inactions, would result in the attorney's removal from the appointment list (or a court recommendation to an attorney manager that an attorney be disciplined within the parent attorney office). The court should encourage attorneys to participate in educational opportunities, and the judge should not appoint attorneys who have failed to meet the minimum annual training requirements set out in the rules or standards.

- **Ensure appointments are made when a case first comes before the court, or before the first hearing, and last until the case has been dismissed from the court's jurisdiction.**

Commentary: The parent is disadvantaged in a child abuse and neglect case if not represented by a competent attorney throughout the life of the case. The attorney can explain the case to the parent, counsel the parent on how best to achieve the parent's goals with respect to the child, and assist the parent access necessary services. In most child welfare cases, the parent cannot afford an attorney and requires the court to appoint one. The court should make every effort to obtain an attorney for that parent as early in the case as feasible – preferably before the case comes to court for the first time or at the first hearing. In jurisdictions in which parents only obtain counsel for the termination of

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parental rights hearing, the parent has little chance of prevailing. A family that may have been reunified if the parent had appropriate legal support is separated forever.

- **Ensure parents' attorneys receive fair compensation.**

Commentary: While resources are scarce, parents' attorneys deserve a competitive wage. They should receive the same wage as other government and court-appointed attorneys for other parties in the child abuse and neglect case. Parents' rights to effective assistance of counsel may be compromised if parents' attorneys are not adequately compensated. In most jurisdictions, the court sets the attorneys' fees and individual judges can recommend to court administration that parents' attorneys should be well compensated.

- **Ensure timely payment of fees and costs for attorneys.**

Commentary: Often judges must sign fee petitions and approve payment of costs for attorneys. The judges should do so promptly so parents' attorneys can focus on representing clients, not worrying about being paid.

- **Provide interpreters, investigators and other specialists needed by the attorneys to competently represent clients. Ensure attorneys are reimbursed for supporting costs, such as use of experts, investigation services, interpreters, etc.**

Commentary: Attorneys can not provide competent representation for parents without using certain specialists. For instance, if the client speaks a language different from the attorney, the attorney must have access to interpreters for attorney/client meetings. Interpreter costs should not be deducted from the attorney's compensation. A parent should be permitted to use an expert of the parent's choosing in some contested cases. If the expert charges a fee, the court should reimburse that fee separate and apart from what the court is paying the attorney.

- **Ensure that attorneys who are receiving appointments carry a reasonable caseload that would allow them to provide competent representation for each of their clients.**

Commentary: The maximum allowable caseload should be included in local standards of practice for parents' attorneys. This committee recommends no more than 50-100 cases for full time attorneys, depending on the type of practice the attorney has and whether the attorney is able to provide each client with representation that follows these standards. Once this number has been established, the court should not appoint an attorney to cases once the attorney has reached the maximum level. Attorneys can only do high quality work for a limited number of clients, and each client deserves the attorney's full attention. Of course, the caseload decision is closely tied to adequate compensation. If paid appropriately, the attorney will have less incentive to overextend and accept a large number of cases.

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- **Ensure all parties, including the parent's attorney, receive copies of court orders and other documentation.**

Commentary: The court should have a system to ensure all parties receive necessary documentation in a timely manner. If the parent and parent attorney do not have the final court order, they do not know what is expected of them and of the other parties. If the child welfare agency, for example, is ordered to provide the parent with a certain service within two weeks, the parent's attorney must know that. After two weeks, if the service has not been provided, the attorney will want to follow up with the court. In some jurisdictions, copies of court orders are handed to each party before they leave the courtroom. This is an ideal situation, and if it is not feasible, the court should determine what other distribution method will work.

- **Provide contact information between clients and attorneys.**

Commentary: Often parties in child welfare cases are difficult to locate or contact. Some parents lack telephones. The court can help promote contact between the attorney and parent by providing contact information to both individuals.

- **Ensure child welfare cases are heard promptly with a view towards timely decision making and thorough review of issues.**

Commentary: Judges should attempt to schedule hearings and make decisions quickly. Allotted court time should be long enough for the judge to thoroughly review the case and conduct a meaningful hearing.

When possible, judges should schedule hearings for times-certain to avoid delaying attorneys unnecessarily in court. When attorneys are asked to wait through the rest of the morning calendar for one brief review hearing, limited dollars are spent to keep the attorney waiting in hallways, rather than completing an independent investigation, or researching alternative placement or treatment options.

Judges should avoid delays in decision making. Delays in decision making can impact visitation, reunification and even emotional closure when needed. If a parent does not know what the judge expects, the parent may lack direction or motivation to engage in services.

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Their input was essential to this project, and their willingness to assist was extraordinary.

¹ Model Rules of Professional Conduct 1.1 (Competence).

² The National Association of Counsel for Children is accredited by the American Bar Association to certify attorneys as specialists in Child Welfare Law. The Certification Program is open to attorneys who represent children, parents, or agencies in child welfare proceedings.

³ Model Rule 1.3 (Diligence).

⁴ Model Rule 1.4 (Communication).

⁵ Model Rule 2.1 (Advisor).

⁶ Model Rule 1.2 (Scope of Representation and Allocation of Authority).

⁷ Model Rule 1.6 (Confidentiality of Information).

⁸ Model Rule 1.4 Communication

⁹ Id.

¹⁰ Id.

¹¹ Model Rules 1.7 (Conflict of Interest: Current Client); 1.8 (Conflict of Interest: Current Clients: Specific Rules); 1.9 (Duties to Former Clients).

¹² Renne, Jennifer L. Chapter 4, page 49, "Handling Conflicts of Interest," *Legal Ethics in Child Welfare Cases*. Washington, DC: American Bar Association, 2004.

¹³ Model Rule 1.3 (Diligence).

¹⁴ Model Rules 1.1 (Competence); 1.3 (Diligence).

¹⁵ Model Rule 1.4 (Communication).

¹⁶ Model Rules 1.1 (Competence); 1.3 (Diligence).

¹⁷ Id.

¹⁸ Id.

¹⁹ Model Rule 3.1 (Meritorious Claims and Contentions).

²⁰ Model Rule 5.1 (Responsibility of Partners, Managers and Supervisory Lawyers).

²¹ Model Rule 1.1 (Competence).

²² The Court Improvement Program (CIP) is a federal grant to each state's (as well as the District of Columbia and Puerto Rico) supreme court. The funds must be used to improve child abuse and neglect courts. States vary in how they allocate the dollars, but funds are often used for training, benchbooks, pilot projects, model courts and information technology systems for the courts.

Models of Delivering Parent Representation

The [Washington State Office of Public Defense \(OPD\)](#) provides legal representation to indigent parents in child welfare proceedings. The program was created more than a decade ago following an investigative report showing that indigent parents throughout the state typically received poor legal representation in dependency and termination cases. Now operating in 83% of the state, the Parents Representation Program provides state-funded attorneys for indigent parents, who have legally mandated rights to counsel. These attorneys are contracted by OPD, which oversees performance, limits caseloads and provides resources.

The OPD designed and implemented standards specifically for dependency and termination case representation, uniquely blending a counselor at law approach with traditional practice techniques. The standards require OPD contract attorneys to meet and communicate regularly with their parent clients throughout the case, ensure their clients have adequate access to services and visitation, prevent continuances and delays within their control, prepare cases well, and attempt to negotiate agreements and competently litigate if no agreement is reached. Reasonable caseloads are set at no more than 80 open cases per full-time attorney (equivalent to about 60 parents).

The program has been favorably evaluated six times. In 2010, in consultation with the Washington State Center for Court Research, OPD published a report on the court records and court orders in 1,817 dependency cases prior to and after implementation of the Parents Representation Program. The comparison found significant differences in the rate of reunification. Cases commenced after the program was implemented achieved permanency 36.5% more often than those that were commenced prior to representation under the program began.

A 2011 study by the University of Washington, which conducted the study at DSHS's request, found that after the Parents Representation Program was instituted in various counties, cases were decided between one month and one year faster. The study concluded that the program is helpful in getting children out of foster care and into permanent homes that it should be extended statewide. The reduction of time that children spend in care has been attributed as saving the state hundreds of thousands of dollars.

[The Detroit Center for Family Advocacy](#) provides legal and social work advocacy for parents to ensure that children do not needlessly enter foster care. The Center receives referrals directly from child welfare agencies to help at-risk families resolve legal issues that directly impact the child's safety in the home. For example, a mother may need assistance resolving a housing issue against a landlord. A domestic violence victim may need assistance obtaining a restraining and child custody order against an abusive ex-husband. Or a father may need an advocate to ensure that a school is providing the right services to a child with special needs. The model is based on a fundamental belief that early intervention by a multidisciplinary legal team can prevent kids from unnecessarily entering foster care.

A three year evaluation conducted between 2009 and 2012 confirmed the efficacy of the model. During the evaluation period, the Center served 110 children for whom the child protective services had substantiated child abuse or neglect. The CFA was to use legal tools and

advocacy, supported by social workers, to safely prevent removal. Not one of those children entered foster care—reducing trauma to the child and family and also avoiding thousands of dollars in costs for each child. The Center achieved its legal objectives in 98.2 percent of its prevention cases, and the multidisciplinary approach to addressing problems ensured that these children were able to remain in their homes.

[The Center for Family Representation](#) (CFR) in New York is another example of a comprehensive parent representation model that is achieving notable outcomes. The CFR model provides every parent with an attorney, a social worker, and a parent advocate. Parent advocates are parents who themselves once faced family court prosecution, had their children removed, and were able to successfully reunify their families. Under the CFR model, every parent is surrounded by a team that works together to problem-solve, identify resources, strengths and needs and provide counsel and advice. By combining in-court litigation with out-of-court social work referrals and case-management, individualized service planning, and parent mentoring, CFR dramatically improve outcomes for our families. Former clients of CFR report very high degrees of satisfaction with CFR representation, citing it as essential to their successes and communicating that they truly felt their voices were heard and needs effectively addressed.

Models of Delivering Child and Youth Representation

[KidsVoice](#) in Pittsburgh, Pennsylvania is recognized as a national model for multi-disciplinary and holistic approach to child advocacy and legal representation. They are a non-profit agency that advocates in court and in the community to ensure safe and permanency homes for abused, neglected, and at-risk children. Each year, KidsVoice represents nearly 3,000 children involved in the child-welfare system in Allegheny County's Juvenile Court. Child advocacy at KidsVoice goes beyond the traditional child welfare and juvenile court arenas. The staff advocates for clients in educational, medical, mental health and Social Security matters, as well as providing representation for minor criminal citations and for expungement of delinquency records. They also assist the older clients as they pursue college or vocational training opportunities and transition to living independently. Every client is represented by both an attorney and a Child Advocacy Specialist (a social service professional with expertise in social work, mental health, education or child development).

The [Wyoming Guardians Ad Litem Program](#) is a state- and county-funded centralized state office that trains and supervises all attorneys representing children in Juvenile Court in the state. In 2008, the program adopted rules and policy setting practice standards and addressing other related quality indicators like the presence of children and youth in court proceedings, set caseload maximums for all program attorneys, began specialized training for the program attorneys, instituted a quality assurance process, and a multi-tiered evaluation process for program attorneys. From 2008 to 2012, the program underwent an overhaul of the program and brought many of the attorney positions in-house as full-time attorneys or state employees, drastically reducing the number of independent contract attorneys. In 2015, the program released an on-line cases management system to better track compliance with standards, timeliness of proceedings, and outcomes for children and youth.