



RECOMMENDATIONS ON CHILDREN IN FOSTER CARE

**CALIFORNIA WORKING FAMILIES POLICY SUMMIT
JANUARY 13, 2009**

INTRODUCTION

The challenges faced by youth aging out of foster care have been described in numerous academic journals and the press.¹ In California, over 5,000 children aged out of foster care placements between July 1, 2007 and June 31, 2008.² The Youth Law Center supports the recommendation of the John Burton Foundation to provide ongoing support for these youth. At the same time, California also has an obligation to ensure that child welfare policies and practices do not deprive children in foster care of an opportunity for healthy development or contribute to the difficulties they experience.

Nearly 75,000 California children are in foster care placements. Many of these children spend a substantial portion of their childhoods in state care. More than 33,000 children have been in care for more than two years, and nearly 15,000 have been in care for five years or more. Over 2,800 children under the age of twelve have been in care for five years or more, and over 4,200 children under the age of six have been in care for two years or more, including more than 1,500 who have been in care for three years or more.³ The care these children receive while in state custody will have a long-term effect on their growth and development and their ability to function as productive members of society.

State and local agencies share responsibility for the welfare of children in foster care. The California Department of Social Services (CDSS) is charged with implementing federal and state child welfare laws. Within CDSS, the Community Care Licensing Division (CCL) is responsible for ensuring that children's residential facilities comply with licensing regulations, and the Children and Families Division (CFD) oversees child welfare services. County child welfare agencies (CWAs) administer the child welfare program in their counties; they are responsible for making placements and monitoring the welfare of children who have been removed from home by the juvenile court.⁴

POLICY OBJECTIVE #1

Ensure residential placements for children are safe and respect the personal rights of their residents.

Background

California law requires placement of foster children in a safe and appropriate setting⁵ and mandates minimum licensing standards for facilities providing residential care for children.⁶ Licensing criteria⁷ include not only basic health and safety standards, but also personal rights guarantees for residents. Personal rights are especially important to youth in group care because they include things that are important to healthy development, such as the right to communicate with friends and family, the right to engage in community activities, and the right to attend school and participate in age-appropriate extra curricular, cultural and personal enrichment activities.⁸ Licensing regulations also require facilities to have a written Plan of Operation that describes the types of children to be served; the services provided by the facility; and procedures for admission, discharge, and development of an individual needs and services plan for each child.⁹

California used to lead the nation in setting strict standards and licensing procedures, including annual facility inspections, to protect children in out-of-home placement. But in 2003, the legislature reduced the frequency of regular facility inspections as part of a cost-savings measure.¹⁰ As a result, some residential facilities may go as long as five years without being inspected. The California State Auditor has concluded that weaknesses in CCL could put the health and safety of vulnerable clients at risk,¹¹ and complaints made to the California Foster Care Ombudsman suggest that many youth experience violations of their personal rights. Although CCL has made efforts to improve its operations, current funding is inadequate to fully support its responsibilities.

Recommended Actions

- A. The legislature should reinstate annual unannounced inspections of children's residential facilities and fully fund CCL operations.
- B. CDSS should provide training and management oversight to ensure consistency in the enforcement of CCL standards, implement Health & Safety Code § 1538.3 to provide counties with improved access to substantiated complaints for group home facilities, and ensure that children and youth are able to engage in age-appropriate activities.
- C. Placing agencies should monitor licensing complaints and activities and should not use placement facilities unless they are safe; respect the personal rights of residents, including the right to engage in age-appropriate activities; and meet the individual needs of children placed in them. In addition to making required periodic visits to children already placed,¹² counties should have a procedure for reviewing and acting upon reports they receive concerning licensing violations,¹³ and for reviewing relevant licensing files prior to using a facility as a placement.

POLICY OBJECTIVE #2

Reduce inappropriate use of congregate care.

Background

Congregate (group) care is an expensive¹⁴ placement option that is not appropriate for most children in foster care. While short-term mental health treatment outside of a family setting may be necessary for some children, congregate care, particularly in large facilities remote from a child's community, provides little opportunity for healthy development and creates obstacles to permanency.¹⁵ Some counties are reducing the use of congregate care, through efforts like the Family-to-Family Initiative and the use of wrap-around services, therapeutic foster care, and other evidence-based services for children in family care. Even so, too many children still live in group homes, many far from their homes and communities. As of July 1, 2008, more than 8,300 California children were in group homes, including 934 children under the age of twelve and 116 under the age of six. Thirty percent of children living in group homes are placed outside the county that is responsible for their welfare.¹⁶

California law imposes restrictions on the use of congregate care. Counties must place children in the least restrictive, most family-like setting consistent with the child's special needs and interests, in close proximity to the child's home and school.¹⁷ Children may not be placed in group care unless the placement is necessary to meet the treatment needs of the child, and the facility offers those treatment services.¹⁸ Additional protections limit group home placement for children under the age of six.¹⁹

Children must also be placed in the county where their parent or guardian resides, unless they are placed with relatives or no appropriate placement exists within the county and the specific reason for the placement is documented in the child's case plan. If an out-of-county placement is necessary because of a lack of resources, the specific resource needs of the child must be documented in the child's case plan.²⁰

Recommended Actions

- A. Counties should increase efforts to reduce inappropriate congregate care for all children and ensure all placement decisions comply with statutory placement criteria, including special placement criteria for young children. Local policy manuals²¹ and training materials should include the legal criteria for congregate and out-of-county placements, and all case reviews should include compliance with these criteria. Supervisory approval should be required for congregate care and out-of-county placements, and these placements should be reviewed on a regular basis to evaluate whether they continue to be necessary.
- B. CDSS should enforce restrictions on group home and out-of-county placements.
- C. Juvenile court judges should ensure that all placements meet legal criteria and are in the best interest of the child. A checklist of legal placement criteria might assist judges in reviewing congregate care and out-of-county placements.
- D. The legislature should pass legislation to limit placement of children under twelve in congregate care and require CDSS to establish standards that are appropriate for congregate care facilities that accept children ages 6-12.

POLICY OBJECTIVE #3

Ensure eligible youth transitioning from foster care are enrolled in and retain Medi-Cal.

Background

California has implemented a federal Medicaid option that provides Medi-Cal eligibility for youth who age out of foster care. Under this option, known as Extended Medi-Cal Eligibility for Former Foster Care Children (FFCC), youth in foster care on their 18th birthday are eligible for Medi-Cal coverage with no share of cost (free to the youth) until their 21st birthday, regardless of income, resources, or living arrangement.²² The county must transition youth to the extended Medi-Cal program without requiring completion of an application.²³ The purpose of FFCC is to provide continuing health care coverage and continuity of care for youth who have been in foster care.

Nevertheless, youth and professionals who work with foster youth report that many are dropped from Medi-Cal as a result of Medi-Cal redeterminations, which require youth to fill out forms confirming their eligibility and return these forms to the local welfare office within a specified period of time. Medi-Cal has been denied for youth who did not return the forms on time, failed to fill out the forms correctly, or never received the redetermination papers because they were sent to the wrong address. The current redetermination process not only interrupts health care coverage for the youth, but also wastes resources by creating additional unnecessary paperwork.

SB 1132, which passed both houses of the legislature in 2008, would have prohibited the Department of Health Care Services from requiring former foster youth to complete paperwork or provide other information as a condition for continued Medi-Cal benefits to which the youth is already entitled. The Governor vetoed SB 1132, saying it could not be implemented because federal law currently requires states to conduct annual eligibility determinations for Medi-Cal beneficiaries. Federal regulations require states to redetermine the eligibility of Medicaid recipients, with respect to circumstances that may change, at least every 12 months, but federal law does not mandate any particular process.²⁴ Therefore, California could design a simple redetermination process that does not present bureaucratic hurdles to continued coverage for eligible youth.

Recommended Actions

- A. The Department of Health Care Services should work with the sponsors and supporters of SB 1132 and other interested foster youth, advocates, and youth serving professionals to design a redetermination process for the FFCC program that meets federal requirements and ensures continuity of coverage for former foster youth.
- B. If legislation is necessary, the California legislature should pass a bill to establish an appropriate FFCC redetermination process, and the Governor should sign it.

For more information about these recommendations, contact the Youth Law Center at 415-543-3379 or go to www.ylc.org.

END NOTES

¹ E.g., Fernandes, A. L. (2008). *Youth Transitioning from Foster Care: Background, Federal Programs, and Issues for Congress* (Congressional Research Service); Needell, B., et al. (2002) *Youth Emancipating From Foster Care in California: Findings Using Linked Administrative Data* (Center for Social Services Research, U. C. Berkeley); Lemley, A. (2009). *Recommendations on Children in Foster Care* (Working Families Summit.)

² Needell, B., et al. (2008). *Child Welfare Services Reports for California*. http://cssr.berkeley.edu/ucb_childwelfare

³ Needell, B., et al, *supra* at note 2.

⁴ Welf. & Inst. Code §§ 11404(a); 16502. Probation departments that have an agreement with the CWA in their county are responsible for making and monitoring placements of children who have been adjudicated delinquent.

⁵ Health & Safety Code § 1501.1; Welf. & Inst. Code § 16501.1(c).

⁶ Health & Safety Code § 1503.5(b).

⁷ 22 Cal. Code Regs. § 80,000, *et seq.*

⁸ *See, e.g.*, 22 Cal. Code Regs. § 84072. Children and youth in foster care have a right to engage in age-appropriate activities. Welf. & Inst. Code § 362.05.

⁹ E.g., 22 Cal. Code Regs §§ 84022, 84068.2, and 84068.4.

¹⁰ A.B. 1752 (Chapter 225, Stats. 2003), a budget trailer bill, included changes to community care facility licensing procedures codified at Health & Safety Code § 1534.

¹¹ California State Auditor, (2003). *Department of Social Services: Continuing Weaknesses in the Department's Community Care Licensing Programs May Put the Health and Safety of Vulnerable Clients at Risk*.

<http://www.bsa.ca.gov/pdfs/reports/2002-114.pdf>

¹² Welf. & Inst. Code §§ 16501.1(f)(4) and 16516.5; MPP 31-320.

¹³ *See*, Welf. & Inst. Code § 1538.5.

¹⁴ Group home rates range from \$1486 to \$6694; compare with basic foster family rates (\$446 - \$627), Foster Family Agency treatment rates (\$1589 - \$1865), and Intensive Treatment Foster Care (\$2985 - \$4476.) California Department of Social Services, All County Letter (ACL) 08-01 (January 17, 2008).

<http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl08/08-01.pdf>

¹⁵ Barth, R.P. (2002). *Institutions vs. Foster Homes: The Empirical Base for the Second Century of Debate*. Chapel Hill, NC: UNC, School of Social Work, Jordan Institute for Families; Freundlich, M., Avery, R. (2005). *Planning for permanency for youth in congregate care*, 27 CHILDREN AND YOUTH SERVICES REVIEW 115 -134. Congregate care, with its shift staff and changing populations, is of particular concern for young children. *Id.*, Berrick, J.D., et al. *Group Care and Young Children*, 71 SOCIAL SERVICE REVIEW 257 – 273 (1997); Berrick, J.D., et al (1998). THE TENDER YEARS. Oxford University Press. Group care has also been associated with increased risk of delinquency arrests. Ryan, J. P., et al., (in press) *Juvenile delinquency in child welfare: Investigating group home effects*, CHILDREN AND YOUTH SERVICES REVIEW.

¹⁶ Needell, B., et al, *supra* at note 2. These numbers do not include 205 children placed in shelter care.

¹⁷ Welf. & Inst. Code §§ 16000(a), 16501.1(c).

¹⁸ Welf. & Inst. Code § 11402(c).

¹⁹ Welf. & Inst. Code §§ 319.2, 361.2(e)(8); Health & Safety Code § 1530.8.

²⁰ Welf. & Inst. Code § 361.2(f)(4),

²¹ *See, e.g.*, Los Angeles County Department of Child and Family Services, CHILD WELFARE HANDBOOK 0100.510.45 - 60 and 0100.570.10. <http://dcfs.co.la.ca.us/aboutus/policy.html>

²² 42 U.S.C. § 1396a (a) (10)(A)(ii)(XVII); Welf. & Inst. Code § 14005.28; All County Welfare Directors Letters (ACWDL) 00-41 and 00-61.

²³ ACWDL 00-41, page 3; ACWDL 00-61, page 2.

²⁴ 42 CFR § 435.916.