

Informational Hearing

Senate Human Services Committee

COVID-19 Impacts on Foster Care

**November 16, 2020 - 1:00 p.m.
State Capitol Room 4203**

Background Paper

Introduction

Few aspects of daily life have not been impacted by the COVID-19 pandemic and the child welfare services (CWS) system is no exception. Rather, the COVID-19 pandemic has had an incredible, and ongoing, impact on the CWS system and the children and youth under the care and custody of that system. Foster children and youth have had their normal routines uprooted by stay at home orders, social distancing and remote schooling, just like most of California's children. However, these youth have also had their necessary services, contact with social workers, and visitation with parents and siblings affected. Resource families have had to weigh the risks of in person visitation against their own health concerns and struggled to continue serving as a family based placement for foster youth when remote schooling conflicted with their own unemployment.

The CWS system is a complicated system that requires coordination between parents, resource families, county welfare offices, county probation offices, foster family agencies, congregate care facilities, mental health providers, schools, the judicial system and others who care for and provide services to the children and families involved in the system. The COVID-19 pandemic has only further complicated the required coordination.

This background paper, and the Senate Human Services Committee Hearing on COVID-19's impacts on foster care, examines the changes made to the system in response to the COVID-19 pandemic and ongoing challenges resulting from the pandemic's impact on how the system operates.

Child Welfare Services

The CWS system is an essential component of the state's safety net. Social workers in each county who receive reports of abuse or neglect, investigate and resolve those reports. When a case is substantiated, a family is either provided with services to ensure a child's well-being and avoid court involvement, or a child is removed and placed into foster care. In 2019, the state's child welfare agencies received 475,450 reports of abuse or neglect. Of these, 67,427 reports contained allegations that were substantiated and 28,407 children were removed from their homes and placed into foster care via the CWS system. As of July 1, 2020, there were 60,778 children in California's CWS system.

Abused and neglected children who have been removed from their homes fall under the jurisdiction of the county's juvenile dependency court. The dependency court holds legal jurisdiction over the child, while the child is served by a CWS system social worker. This system seeks to ensure the safety and protection of these children, and where possible, preserve and strengthen families through visitation and family reunification. It is the state's goal to reunify a foster child or youth with their biological family whenever possible. Reunification is accomplished through the child's biological parents completing all reunifications requirements ordered by a dependency court judge, which typically involves the provision of services, such as drug counseling or parenting classes, to that parent. In instances where reunification is not possible, due to the parent being unable or unwilling to meet the court's requirements, it is the state's goal to provide a permanent placement alternative, such as adoption or guardianship, with priority placed on uniting children with other relatives or nonrelative extended family members.

Initial Government Response to COVID- 19

On March 4, 2020, Governor Newsom declared a state of emergency to help the state prepare for the broader spread of COVID-19, as well make additional resources available and formalize emergency actions already underway across multiple state agencies and departments. Then, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, creating a statewide stay at home order to protect the health and well-being of all Californians and to establish consistency across the state in an effort to slow the spread of COVID-19. Since May 4, 2020, with the issuance of Executive Order N-60-20, local jurisdictions around the state have been making various efforts to gradually reopen as provided for by state guidance. This state of emergency, the stay at home order, and the county specific reopening strategy continues to impact California's CWS system.

In response to Executive Order N-33-20, CDSS issued All County Letter (ACL) 20-25 on March 21, 2020 regarding the provision of "optimal child welfare and probation services" during the COVID-19 state of emergency to children and families. This ACL reminded counties that California required they engage in efforts to prevent the spread of COVID-19, but that this must be balanced with the state and counties' "critical responsibility to ensure that children are safe from abuse and neglect and that their overall health, safety and well-being are protected."¹ ACL 20-25 provided guidance on practices across the CWS system, ranging from initial child welfare investigations to the needs of foster youth and nonminor dependents (NMDs) in college. The issued guidance on key aspects of the system is discussed in further detail below.

Impact on Child Welfare Investigations

CDSS considers the child welfare hotline and emergency response (ER) investigations an essential government function and encouraged counties to prioritize these services through ACL 20-25. County child welfare ER workers are the first responders of the CWS system. They assess children and families for the safety and well-being of children who are reported as being abused or neglected. Concerns have been raised during the COVID-19 pandemic that stress may be heightened among families at risk for child abuse or neglect due to health concerns, potential financial losses, and increased caregiving responsibilities while at the same time those children have less regular, in person contact with mandated reporters, such as teachers. As such, CDSS

¹ https://mcusercontent.com/73901133dd7eala5581344daf/files/c1df119a-d459-475e-ac01-e83a42f5cb69/ACL20_25.pdf

issued guidance to protect the health and safety of these workers, such as following public health guidance, practicing social distancing, and asking health screening questions at the start of an investigation.

Impact on Dependency Courts

The juvenile dependency court holds legal jurisdiction over a foster child or NMD. The juvenile dependency court is responsible for determining whether a child or youth is safe and for making decisions about the care and control of the child. The court also orders the provision of services to the child and biological parents through a variety of court hearings. Some key hearings in the juvenile dependency court process are:

- **Detention Hearing** – At a detention hearing, which must occur within 72 hours of the child’s removal from the home or within 15 days of the county filing a petition if the child was not removed, the judge will decide whether the child returns home following a removal from the home by a social worker. This is the judge’s first assessment of whether a child is safe under the care and supervision of their parent, it occurs right after the child is removed, before all information about the case might be available.
- **Jurisdictional Hearing** – During a jurisdictional hearing, which must be held within 15 court days from the date of the detention order if the child has been removed or within 30 calendar days of the date that a petition has been filed if the child was not removed, a judge determines whether the allegations of abuse or neglect in the petition filed with the court are true. If the judge determines the allegations to be true, the court takes authority over the child, making the child a dependent of the court and entering them into the child welfare system. This gives the judge the authority to make orders regarding the child’s care. A child may be placed in a foster home or remain living in their parent’s home while under the jurisdiction of the court, if the judge determines this is safe for the child.
- **Dispositional Hearing** – At a dispositional hearing the judge makes orders regarding the child’s care and provision of services. This hearing may occur at the same time as a jurisdictional hearing. At a dispositional hearing the judge decides: where and with whom the child should live; when, where, and how visitation between the child and their parent occurs; what services the child needs to be safe and healthy; and what services the parent needs in order to be reunified with their child.
- **Review Hearing** – While a child is in the system, the court will have a hearing every six months to review the child’s dependency status. At a review hearing the judge considers: whether a child should be returned to their parent; whether the case should be dismissed or continued; whether the social worker has helped the parent get the services they need to successfully complete their case plan if family reunification services were ordered; whether the child is being taken care of well and properly; whether the child has access to the services ordered; and whether the case plan is being followed. A judge may terminate reunification services to a parent who is not complying with their case plan at a review hearing and schedule a permanency hearing. Depending on the child’s age and the parent’s progress towards reunification a

permanency hearing may occur six months, 12 months, and 18 months from the dispositional hearing. If the child is under the age of three at the time of removal and the court determines no progress towards reunification is being made, the court may order the case to a permanency hearing at the six month mark, if the child is three or over court ordered reunification services are not supposed to exceed 12 months. However, services can be extended to 18 months from the date of initial removal if the court finds that there is substantial probability the child will be returned and safely maintained in the home.

- Permanency Hearing/.26 Hearing – Federal law requires a permanency plan hearing be held no later than 12 months from the date the child entered foster care. A permanency hearing typically occurs once the court has terminated reunification services. At this hearing the court chooses a permanent plan for the child: adoption or customary tribal adoption; legal guardianship; or a long-term planned permanent living arrangement (foster care).
- Post permanency Hearing – After a permanency plan is made for the child, for as long as the court retains jurisdiction over the case, the court will continue to have hearings every six months so that the court can: make sure the child is getting the services/help they need; check in on the child’s living arrangement; review the permanency plan and adjust as needed; consider parental visitation if parental rights have not been terminated; and decide whether the case should be dismissed (ending the court’s jurisdiction).²

As a result of the COVID-19 pandemic, court proceedings were temporarily halted around the state as the shutdown order went into effect. This action resulted in a temporary halting of the normal functioning of the state’s CWS system in a number of counties, as children awaiting detention and disposition hearings had their hearings delayed. In response to the stay at home orders, the California Judicial Council adopted Emergency Rules of Court to address how California courts would continue to operate under the statewide emergency order on April 6, 2020. Emergency Rule 6 was written to apply to all juvenile dependency proceedings filed or pending until the state of emergency related to the COVID-19 pandemic is lifted. Additionally, local courts can make some of their own decisions regarding what services may be offered or whether any special orders will be issued, resulting in some courts closing certain services.

Emergency Rule 6 encouraged local courts to prioritize “essential hearings” in accordance with existing statutory time requirements.³ The emergency rule provides for other hearings to be continued, and thus heard at a later date, but it does not prohibit other types of hearings from occurring. This rule has resulted in variations among local jurisdictions regarding what types of hearings are occurring or being prioritized. Additionally, Emergency Rule 6 provided local courts with the ability to hear any child welfare proceeding via remote technology. This allows courts to

² For more information on dependency hearings see:

http://www.sblawlibrary.org/uploads/7/3/1/1/7311175/bg100_2018pt.pdf

³ Hearings prioritized by Emergency Rule 6 are: protective custody warrants filed under Welfare and Institutions Code section 340; detention hearings; psychotropic medication applications; emergency medical requests; a petition for reentry of a nonminor dependent; or a request to change a court order that impacts the health and safety of the child.

hear all proceedings via court call, webex, zoom or other types of remote technology. As counties begin to reopen, jurisdictional differences are also being seen in regards to whether hearings are occurring remotely or in-person.

Despite the emergency rules of court and other actions taken by the Judicial Council, the effects of COVID-19 continue to be felt within the dependency court system. As discussed at the July 21, 2020 California Child Welfare Council meeting, the Judicial Council has provided significant technical assistance and funding to local courts to aid them in implementing remote access. However, the effects of the pandemic have varied greatly between counties, with particular differences being seen in the local courts of urban and rural counties. It was reported that rural counties were facing challenges with Wi-Fi and other technology access, whereas larger urban counties were facing difficulties juggling multiple priority case types and, in some instances, significant caseload backlogs have resulted. For example, the Los Angeles County Department of Children and Family Services identified 2,156 cases more than 90 days old that had not yet had a disposition hearing. This backlog resulted in families and children awaiting orders for services and placement decisions after their initial detention hearing. The Judicial Council suggested during this Child Welfare Council meeting that these differing impacts were due to the number of children and families in a county's child welfare system.⁴

Impact on County Services

In California, CWS programs are administered by the 58 individual counties, meaning each county organizes and operates its own program of child protection based on local needs and resources while complying with state and federal regulations. Thus, counties are the primary government entity that interacts directly with children and families involved with the CWS system. It is California's counties, either directly or through providers, who are responsible for ensuring children and families have the interventions and services needed to protect the wellbeing of the children and help families address the issues of child abuse and neglect.

As a result of the COVID-19 pandemic, counties have been placed in the difficult position of balancing the needs, health and safety of children and families along with the health and safety of their county social workers and resource families. Counties have had to balance the requirements placed on them by their role within the CWS system with fears and concerns of caregivers and social workers resulting from the pandemic. The following are areas where the state or federal guidance was issued to address challenges resulting from the inability to conduct business as normal during the limitations imposed by the pandemic.

Caseworker Visitation

Under federal law, all children in foster care placements must receive monthly caseworker visits. Prior to the COVID-19 pandemic, the Administration for Children and Families (ACF), within the U.S. Department of Health and Human Services, required monthly in person, face-to-face visitation. As a result of the pandemic, the ACF issued guidance allowing monthly caseworker visits to be accomplished through videoconferencing in situations where an emergency prohibits

⁴ For more information on the July 21, 2020 California Child Welfare Council Meeting see: <https://chhs-data-prod.s3.us-west-2.amazonaws.com/uploads/2020/08/27071604/07.21.20-CWC-Meeting-Highlights-FINAL.pdf>

or strongly discourages face-to-face contact for a public health reason or individual health challenges.

CDSS issued further guidance to California's counties through ACL 20-25 regarding caseworker visitation for foster youth and NMDs. CDSS advised counties to make a child-specific decisions based on the training and experience of the social worker considering all information available to them in regards to whether a face-to-face or remote visit should occur. CDSS advised counties to consider the following factors when determining if face-to-face visitation is necessary: whether the child is being visited by other professionals, tribal representatives, and/or mandated reporters during this time period; the length of time the child has been in their current placement; and the chronological and developmental age of the child, as this may impact their ability to verbalize or otherwise communicate needs and safety issues remotely.

ACL 20-25 recommended the use of video conferencing as the preferred method for communication with a child in foster care when it was determined that in-person visitation was not necessary to ensure the child's safety and well-being. Initially, CDSS guidance suggested phone calls could be substituted for in person visitation for minors in foster care when video conferencing was not available. However, later guidance, through ACL 20-70, states that videoconferencing is the only sufficient substitute to meet state and federal face-to-face monthly visit requirements.

ACL 20-25 treated monthly visitation with NMD's slightly differently than monthly visitation with minors. For NMDs, ACL 20-25 suggested that monthly visitation requirements could be met through video conferencing, telephone contact, or courtesy supervision by a tribal representative or other Title IV-E agency. As with minors, the decision regarding which method of contact is appropriate should be based on a case-specific decision made by caseworker. Through this ACL, CDSS also stressed the importance of caseworkers making arrangements to ensure that the NMD's needs are met, including the development of a plan for housing, food, water, and hygiene during the pandemic, and that the youth has the means to maintain contact with their caseworker and other supports during the stay at home order. Caseworkers were tasked to assist the youth in acquiring cellphones, computers, or other needed technologies so that they could maintain contact with their caseworkers, school, friends, family, and mental health or other service providers.

On June 17, 2020, through ACL 20-70, CDSS updated their monthly visitation guidance in response to counties across the state entering various stages of reopening.⁵ ACL 20-70 advised all county child welfare agencies to resume in-person requirements related to caseworker visits for children and NMDs. ACL 20-70 provided some exceptions to this return to in-person monthly visitation, including for youth placed out of state and for those youth whose counties are still shut down, whose family or caregiver refuses entry due to their own health and safety concerns related to the risk of COVID-19 infection, and for youth or families with known exposure to the virus. When the family or caregiver refuses entry to the caseworker, ACL 20-70 advises counties to identify additional means for accomplishing the visit in person, such as conducting visits outdoors with appropriate physical distancing or utilizing video conferencing.

Additional guidance regarding monthly caseworker visitation is pending, as Executive Order N-75-20 signed by Governor Newsom on August 24, 2020 provides for CDSS to "develop and

⁵ <https://cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2020/20-70.pdf?ver=2020-06-17-122421-740>

implement policies and procedures to allow any periodic caseworker visitation requirement to be fulfilled through videoconferencing technology, rather than through in-person visits.” This suggests that CDSS will be providing counties with policies and procedures that will revolve around the use of videoconferencing when a child-specific decision determines an in-person visit is not necessary to ensure the child’s safety or well-being.

At the time of this writing, the majority of monthly caseworker visitation is required to be occurring in person. Stakeholders indicate that many social workers would appreciate the flexibility provided earlier in the pandemic, as there continue to be health and safety concerns raised by social workers and resource families regarding the exposure risks raised by in person visitation. Additionally, many fear that California’s positivity rate for the virus might increase during colder months, which could necessitate a return to remote monthly visitation. However, other stakeholders have raised challenges and concerns with the use of videoconferencing monthly visits, relating to privacy concerns and difficulties a social worker may have assessing whether there is any form of pressure being exerted over the child or youth preventing them from relaying their needs, feelings or concerns. Even if there is no external pressure, the child or youth may be lacking the privacy necessary to share sensitive information without the risk of being overheard. This ultimately impacts their relationship with their caseworker and their caseworker’s ability to assess the child or youth’s health, safety, and well-being.

Impacts on Resource Families

Resource families are a key component of the state’s CWS system because they serve as the out of home care placements for children in foster care. Resource families may be family or extended family caregivers, or caregivers who had no prior relationship to the child, which is what many people think of when they hear the term foster parent.

Initially implemented in select counties, resource family approval (RFA) was expanded statewide through Continuum of Care Reform legislation. As a result, all counties began implementing the RFA Program on January 1, 2017. This statewide transition to RFA created backlogs in most counties, resulting in lengthier times to approval. The 2019 Budget Act provided \$14.4 million General Fund in one-time funding to counties to help them eliminate the backlog of RFA applications that are pending review and approval.

As a result of the pandemic and the resulting shutdown, the Governor provided flexibilities to the RFA process, including extending the time allowed for payments to emergency caregivers beyond the 365 day limit in existing law and waived some in-person evaluation, signature requirements, and some existing investigation timelines until June 30, 2020.⁶ Furthermore, the Governor provided counties \$166,000 for payments to emergency caregivers beyond the 365 days currently covered while they are awaiting approval. The Governor asserted that this funding was required due to delays in caregiver approvals and caseworker diversion to emergency work.

CDSS issued further statewide waivers and flexibilities, through ACL 20-43, the majority of which provide for resource families to accept or maintain foster child placements despite the impacts of the COVID-19 pandemic. For example, The ACL provided for interviews required during the family evaluation for new resource families to be completed by videoconferencing and provided

⁶ See Executive Order N-53-20.

RFA program staff with the discretion to decide whether an applicant, or individual in the home, needs to be interviewed in person. The ACL encouraged counties to allow RFA applicants to submit scanned copies or photographs of necessary documents or to provide self-attestation for all requirements to minimize delays to the RFA process.

The ACL also provides flexibilities related to required training for RFA parents by encouraging the use of distance learning for pre-approval training, but allows an RFA applicant to be approved if they have met all other RFA requirements but were unable to complete the training. ACL 20-43 also provided flexibility for resource families to complete their 12-month approval update in order to allow additional time to complete training requirements. Subsequently, AB 79 (*Committee on Budget, Chapter 11, Statutes of 2020*) modified RFA program requirements from annual to biennial updates.

ACL 20-43 also offered a number of flexibilities and waivers to increase overall placement capacity within resource families. Through the ACL, CDSS waived existing limitations on the number of children a resource family or resource family applicant may accept when there is an immediate need for the placement of additional children due to COVID-19. The number of foster children placed in a resource family home may still not exceed six, unless one of the following federally allowable reasons are met: to allow a parenting youth in foster care to remain with their own child; to allow siblings to remain together; to allow a child with an established meaningful relationship with the family to remain with the family; or to allow a family with special training or skills to provide care to a child who has a severe disability. Counties may also wave home and grounds requirements related to bedroom sharing and use of common areas for sleeping as necessary for prevention, containment, and mitigation efforts related to COVID-19 as long as the health and safety of a child is not compromised and the arrangement has been assessed as appropriate.

To address some of the challenges presented by the pandemic, the Governor also provided \$1.7 million to counties so that they could offer higher monthly rates to resource families who were impacted by COVID-19. The goal of this funding was to provide counties with funding flexibility so that foster children would be able to stay in their resource family homes, despite the potential for additional costs related to COVID-19, rather than be moved into shelters or other facilities. At the time of writing, CDSS was unable to provide additional information on how this funding was distributed.

Despite these increased flexibilities and the waiver of certain requirements, some counties have still experienced a backlog in their RFA process as a result of the COVID-19 pandemic. The pandemic impacted counties' staff capacity, with some counties reassigning staff to different departments with higher needs or losing staff entirely due to individual staff member needs to remain at home. Concerns have also been raised that some resource families may be unable to continue serving as a resource family due to additional challenges presented by the pandemic. For example, there has been anecdotal reports of resource families being forced to choose between overseeing the remote education of children in their care or employment; of families expressing concern of increased exposure as a result of requirements placed on them as resource families; and other challenges related to the increased stress brought on by the pandemic.

Child and Family Teams (CFTs)

A child and family team is convened by the child welfare placing agency with members who are invested in the family's success. Instead of relying on a single social worker to assess, plan and coordinate care, team members are tasked with identifying the strengths and needs of the child or youth and their family. Team members include the youth, youth's family and extended family members, current caregiver, placing agency social worker and other individuals who are identified by the family as being important. This may include coaches, teachers, tribal members, behavioral health staff and others who have relationships with the child and can help with case planning and placement decisions that are made to best support the child and family's success.⁷ CFTs were implemented because research showed that services for children and families in the CWS system were most effective when delivered in the context of a single, integrated team that centers around the child or youth, their family, and natural and community supports. The CFT process begins when a child or youth enters foster care, and a child welfare social worker or juvenile probation officer engages with the child or youth and their family and then uses a variety of strategies to identify other team members, the child's strength, the child's and family's concerns, and a plan to help them achieve positive outcomes for safety, permanency, and well-being.

Through ACL 20-25, CDSS states "the CFT process serves as an essential strategy to ensure families and providers can continue caring for children and that the county is aware of the practical and emotional needs of caregivers and children during this time." In this ACL, it is further noted that CFTs can serve as a critical point of communication, support, and response for those instances when a child, caregiver, or service provider have been exposed to COVID-19 or tested positive for COVID-19.

Due to the importance of CFT meetings, counties should be continuing to hold them as scheduled, with a switch to remote meetings when meeting in-person was not possible or advisable. However, given the realities of the pandemic, CDSS did provide guidance that allowed counties to prioritize CFT meetings focused on the immediate and contingency planning needs of children and youth in home-based placements and in congregate care placements at risk of or significantly impacted by disruptions related to COVID-19. In order to prioritize those CFTs, the ACL suggests counties may put off CFTs that may be occurring routinely or "in less urgent circumstances" as long as the county communicated with the child's team to ensure the family understands how to request assistance or a CFT meeting if challenges arise. Through this guidance, CDSS acknowledges that, "locating alternative placements for children will be extremely challenging, and the child and family team is an essential strategy to preserve the ability of families and providers to care for our children." CDSS and the Regional Training Academies also released a CFT Remote Facilitation Toolkit to help counties with the implementation of remote CFT meetings by providing guidance and best practices to caregivers and providers participating in virtual CFT meetings.

Despite these ongoing efforts, stakeholders have reported challenges associated with the implementation of remote CFT meetings. In particular, concerns have been raised regarding the privacy of these meetings since some of the available technologies provide less security in terms of who may join the call or videoconference. Additionally, similar to remote court hearings, there are some concerns that youth or other participants might not feel as though they have the privacy needed in their residence to participate fully, and thus may not share certain information. There

⁷ All County Letter NO. 16-84, California Department of Social Services (October 7, 2016).

has been some anecdotal reporting that CFTs are not occurring as frequently or as timely as needed. Some stakeholders report that CFTs are being held only after a placement has destabilized and a placement change is rapidly approaching, putting the youth and others in a difficult and potentially avoidable situation. However, there have been some benefits noted related to the remote facilitation of CFT meetings. Some stakeholders report that participation in CFT meetings has become more robust because desired participants are able to attend remotely. This allows out of state family members and others who might not have been able to attend in person to participate, resulting in more engagement with the CFT process and more support for the child or youth.

Impact on Services

The U.S. Department of Health and Human Services Administration on Children and Families' (ACF) Children's Bureau (CB) issued guidance on a variety of child welfare issues related to the COVID-19 public health emergency on March 27, 2020. In their letter, the CB stated that they believed the continued functioning of the child welfare agencies and courts were "critical to ensuring the safety, permanency and well-being of children and youth who have been removed from their homes and placed into foster care or who may need to be removed from their homes." The CB's letter went on to note that "prolonged or indefinite delays in delivering services and postponements of judicial oversight place children's safety and well-being in jeopardy; may lead to unnecessarily long stays in foster care; and are inconsistent with statutory and regulatory requirements."⁸

California's counties and foster care providers are working to ensure the needs of children and families in the CWS system continue to be met despite the challenges of this ongoing public health emergency. When possible, services have switched to remote technologies, such as telehealth, or other changes to the provision of services were made to protect the health and safety of participants. These changes have not occurred without challenges, and at times ongoing disruptions. What follows is an overview of some service areas, how they have been impacted by the pandemic, and what challenges continue.

Family Visitation

When children and youth are in out-of-home care placements, visitation with their birth parents or siblings is required to maintain connections and help the child develop healthy attachments. Parent-child visitation is a key aspect of family reunification case planning, allowing the child and parent to continue bonding and developing a healthy relationship while the child is in out-of-home care. Visitation between children and their families has been a topic of much discussion during the course of the COVID-19 pandemic.

The ACF CB letter stated that visitation is important for the well-being of both the child and the parent and that their ability to spend time together is particularly important in times of crisis. The CB issued the following guidance on family visitation:

- Discourage or refrain from issuing blanket court orders reducing or suspending family time;

⁸ https://15ucklg5e821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2020/04/Covid-19.Child_Legal-and-Judicial-Letter_Signed-002.pdf

- Encourage resource parents to supervise family visitation to limit additional people having to be involved, or consider the use of family members for supervision;
- Engage in visitation outdoors, where feasible; and
- Inquire whether parents and resource parents have access to technology to ensure virtual connections where in-person family time is not possible.

Through Emergency Rule of Court 6, California’s dependency courts were given guidance that “during the state of emergency related to the COVID-19 pandemic, previously authorized visitation must continue, but the child welfare agency is to determine the manner of visitation to ensure that the needs of the family are met.” The rule further specifies that changes to the manner of visitation must be made on a case-by-case basis, where the child welfare agency balances the public health directives with the best interest of the child and considers whether there is a way for in-person visitation to continue safely. The rule also acknowledges that time together is important for the well-being of both the child and the parent and key to efforts towards reunification.

Additionally, ACL 20-25 provides guidance to counties’ child welfare agencies on family visitation during the COVID-19 pandemic. This ACL recommends that counties assess each situation individually to make the determination of whether in person visitation can safely occur. The ACL stresses that for those children under the age of three, counties should work to maintain face-to-face visits, allowing “the child to continue to develop critical early bonds with their parent.” This is necessary to promote attachment and strengthen the parent-child relationship, which dictates that very young children in out of home placements have frequent and consistent contact with their parents. For all children, the ACL notes that changes to the manner of visitation may cause youth of any age to struggle as they adjust to the disruption in their routines. In those instances where in person visitation cannot safely occur, CDSS recommends that the foster parent provide video conferencing, and that these video conferencing contacts occur more frequently than in-person contact might have been occurring, because that results in this remote manner of contact being more effective at maintaining connection.

Furthermore, the ACL goes beyond just suggesting video conferencing as an alternative method of visitation by asking child welfare agencies to also consider alternative visitation protocols, such as providing for in-person visitation to occur outside and with social distancing recommendations and screening protocols in place. Moreover, at the start of the shutdown, CDSS encouraged counties to consider whether the youth had several overnight visits with their parent and if they are due to return home soon. In these instances, the ACL notes that an extended visit with the parent may be appropriate, as long as it is allowed under existing court orders.

Despite the acknowledged importance of family visitation to both the children and parents’ well-being, there continues to be ongoing challenges with ensuring quality visitation occurs. California Youth Connection notes that their members report difficulties arranging for video conferencing with their siblings in different out-of-home placements. Parents’ attorneys and other stakeholders also suggest that visitation continues to occur via remote technologies even as other aspects of county business returns to in-person contact. There are concerns with this absence of in-person visitation, particularly with younger children, because of the impacts it has on children’s ability to bond with their parent, which may reduce their ability to successfully reunify. At the same time, stakeholders acknowledge that in some instances, particularly those where the caregiver or child may be higher risk for the coronavirus, there is a real and recognized danger associated with the

additional exposure in-person visitation brings. As the COVID-19 pandemic's effects continue to reverberate within the state's CWS system, family visitation and recommendations related to how it occurs may need to be reevaluated.

Youth Access to Technology

Existing law, the Foster Youth Bill of Rights, provides that all children placed in foster care have the right to participate in extracurricular, cultural, racial, ethnic, personal enrichment, and social activities, including, but not limited to, access to computer technology and the internet. Existing law further provides that this access shall be provided in a manner consistent with the child's age, maturity, and developmental level. Under existing law, it is typically understood that the caregiver determines what type of access to technology is appropriate for a particular child through the application of a "reasonable and prudent parent standard." Existing law defines the "reasonable and prudent parent standard" as the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interest of a child while simultaneously encouraging emotional and developmental growth.

The COVID-19 pandemic and the resulting stay at home order have made access to technology more important than ever. With everything from court hearings to school to medical appointments to staying connected with family or other supports switching from in person to videoconferencing or other remote technologies, foster youth need access to technology and the internet more than ever. In the early months of the pandemic, John Burton Advocates for Youth raised more than \$450,000 from foundations and individual donors that they used to provide more than 2,500 foster youth with laptops through a partnership with iFoster. CDSS has also partnered with iFoster to offer technology access to foster youth and former foster youth ages 13-24, including: free, unlimited high-speed data hotspots; headsets; and laptops to assist youth in taking online classes or accessing other services. Additionally, Governor Newsom provided \$313,128 so that iFoster would be able to provide additional foster youth with access to cell phones and laptops. This amount provided for the purchase of 2,000 laptops and 500 cell phones as well as short-term staffing assistance so that iFoster could more quickly process the applications and get phones configured and shipped. Governor Newsom has also directed the state Government Operations Agency to utilize the State Surplus Property Program to identify laptops that can be distributed to foster youth attending higher education.

At the time of writing, exact numbers on how many youth have been provided with laptops or cellphone access through these efforts was unavailable. Stakeholders report that despite these efforts, some children and youth continue to have challenges with connectivity or technology access. Broadband issues are not limited to foster youth and have presented challenges with remote schooling around the state. However, foster youth may have additional challenges accessing the specific types of technology their remote education programs may require, as it might not align with the options available to them through iFoster or other programs.

Impact on Special Populations

The COVID-19 pandemic has impacted all children in the CWS system, whether it be due to their services switching to video conferencing, their school going remote, caregivers or family members becoming ill with the virus, or simply the changes to daily life and resulting stress most Californians are experiencing as a result of the pandemic. Yet, there are some populations within

the CWS system that may present unique needs or challenges due to how the pandemic and resulting shut down impact their service needs. A sample of these unique challenges are discussed below.

Nonminor Dependents in Extended Foster Care

The intent of extended foster care is to bridge the gap between the intensive supervision of foster care and unsupervised adulthood by maintaining a safety net of support while providing youth independence and additional educational or work opportunities. It was prompted by the recognition that many youth were unable to successfully transition from foster care or group care to adulthood without additional guidance and assistance.

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (*P.L. 110-351*) enabled states to expand the definition of a foster “child,” by creating extended care for youth up to age 21. The federal law allows foster youth to remain in care past age 18 if they meet one of the following participation criteria: are enrolled in high school or a high school equivalency credential; enrolled in college, community college, or vocational education; employed for at least 80 hours a month; participating in other qualifying activities or programs designed to remove barriers to employment; or medically exempt from meeting any of the other participation criteria. In 2010, California enacted AB 12 (*Beall, Chapter 559, Statutes of 2010*), which permits foster youth to remain in extended foster care until age 21, under the same criteria as the federal statute. The youth must agree to remain in foster care within six months of turning 18, reside in an eligible placement, and agree to work with their social worker to meet the goals of their transitional living plan. Additionally, existing law allows qualifying nonminors who are former foster youth under the age of 21 to petition the court for re-entry into foster care to participate in extended foster care, as provided.

Youth participation in extended foster care has exceeded expectation. As of January 1, 2020 there were an estimated 7,396 youth participating in extended foster care in California.

To help ensure the NMDs continue to be supported during the pandemic, the Governor’s April 17, 2020 Executive Order N-53-20 suspended the requirements for physical, in-person, face-to-face application, meetings, visits and signature requirements for youth entering or reentering extended foster care. This executive order also provided a temporary extension for all NMDs currently in extended foster care who turn 21 on or after April 17, 2020 through June 30, 2020.

Additionally, CDSS advised counties to demonstrate flexibility when working with NMDs who have experienced disruptions in meeting extended foster care program eligibility criteria. The Legislature furthered the efforts to support NMDs during the pandemic via SB 115 (*Committee on Budget and Fiscal Review, Chapter 40, Statutes 2020*). This bill appropriated \$28,629,000 to fund the costs associated with continuing extended foster care assistance payments, until June 30, 2021, for any NMD who met eligibility requirements for the EFC program but then lost their employment or experienced a disruption in their education program as a result of the COVID-19 pandemic. This appropriation ensures NMDs who were participating in EFC prior to the pandemic are able to remain in EFC until June 30, 2021. Additionally, this funding also allows counties to make monthly payments to, or on behalf of, any NMD who attained 21 years of age while in EFC on or after April 1, 2020 through June 30, 2021. This allows NMD who would have otherwise aged out

of EFC during the pandemic to continue receiving monthly assistance payments and case management supports, helping them remain housed and supported during the pandemic.

Stakeholders had reported challenges with the implementation of these provisions related to NMDs around the state. Due to vetoed legislation related to NMDs and EFC during states of emergency (*SB 912, Beall, 2020*) there seemed to be varying levels of confusion in some counties regarding whether youth who turned 21 or were no longer meeting EFC participation requirements were able to continue receiving assistance payments and case management support after the executive order's June 30, 2020 expiration date. CDSS has since released two ACLs to address implementation concerns.⁹

There are still challenges regarding those NMDs who turned 21 before the ACLs were released and because of the ongoing confusion were discharged from EFC. Stakeholders report that these youth have largely been identified by counties and their partners, and efforts to have them re-enter EFC system are ongoing. Furthermore, youth who turned 21 after the pandemic began but before the April 17 executive order are ineligible for this additional assistance. Some providers have found other funding sources to help keep these youth housed and supported.

Youth in College

At the start of the pandemic as colleges were closing, CDSS reminded counties of their obligation to support all NMDs – including those in dormitory housing that may have closed. CDSS stressed the importance of having caseworkers reach out to youth to ensure they have the resources needed if they must move from campus, including funds for temporary relocation or access to alternative housing. If dorms closed and the youth residing there were displaced, counties were advised to continue the Supervised Independent Living Program (SILP) payment. If a youth had to vacate their dorm or other housing due to colleges switching to remote education models, NMDs are responsible for informing the county of a new or temporary residence and counties are able to waive SILP inspections as a result of COVID-19 impacts.

The impact of the COVID-19 pandemic on foster youth participating in higher education has not been limited to dorm closures or to challenges with their spring semester. As youth returned to college in the fall, the impact of the pandemic was ongoing. Stakeholders' report that these youth are struggling with access to needed technologies as college classes returned online this fall. Additionally, there is anecdotal evidence that some youth have chosen to take some time off from higher education during the pandemic either because they do not have the things they need to succeed in taking their classes online, such as a quiet place to attend their classes remotely and study or consistent broadband access, or because they have felt the need to instead take on employment during this challenging financial time.

Youth Placed Out of State

Some of California's foster youth reside in out of state placements. For these youth, a determination was made that the most appropriate placement was not available in California at the time of their placement. This might be due to the need for particularly intensive services or other challenges. Out of state placements come under the Interstate Compact on the Placement of

⁹ See ACL 20-117 (guidance regarding NMDs who turn 21) and ACL 20-113 (guidance regarding EFC program flexibilities such as participation requirements)

Children (ICPC), which is a contract among member states and U.S. territories authorizing them to work together to ensure that children who are placed across state lines for foster care or adoption receive adequate protection and support services. The ICPC establishes procedures for the placement of children and fixes responsibility for agencies involved in placing children. Additionally, existing California state law requires CDSS ensure that any out of state facility receiving California foster youth meets California's licensing standards for such facilities.

Monthly caseworker visitation with youth who are placed out of state always presents challenges, and those difficulties have been magnified as a result of the pandemic. CDSS, through ACL 20-70, provides that the county staff should conduct such visitation in accordance with the guidance provided in the ACL. However, in-person visitation with these youth would often require travel by plane and time spent at airports, which can increase risk of exposure and spread of COVID-19. Additionally, even after traveling to the other state, there may be difficulty accessing the youth in their out of state placements because of policies around mandatory quarantines or COVID-19 testing for those who have traveled out of state. Furthermore, staffing in counties has been impacted as a result of the pandemic, meaning counties have less staff available for travel time and other constraints associated with out of state caseworker visitation.

At the same time, concerns have been raised that out of state facilities may not be implementing the same safety standards and practices required of California's congregate care placement settings in response to the pandemic. This leaves some stakeholders concerned that youth placed out of state may be at greater risk for exposure to COVID-19 or have the procedures related to the pandemic and resulting conditions monitored less closely than those facilities located in the state.