IN PRACTICE

Seeking Shelter in Tough Times:
Securing Housing for Youth who Age Out of Foster Care

by Dale Margolin

Across the country, everyone is talking about a “housing crisis.” For youth who age out of foster care, just finding a place to sleep each night is always a struggle. We know that nationally, 54% of recently aged-out youth are homeless or unstably housed. In addition, these youth face higher rates of unemployment, undereducation, teen pregnancy, and incarceration.

Youth who Age Out

According to the U.S. Department of Health and Human Services (DHHS), approximately 25,000 youth age out of foster care each year.3 However, many on the frontline believe this is an underestimate, since it only counts young people whom the state officially discharges. DHHS does not include youth who leave the system (i.e., runaway), which is another estimated 30,000.4

Before getting to the nitty-gritty of the law, some perspective on the issue is necessary: The average age that young adults who have never experienced foster care leave their family home for good is 24, and 40% return to live at home again at least once afterwards.5 Today in the United States, nearly four million adults between 25 and 34 are living with their parents,6 and parents provide an average of $38,000 in assistance to their adult children through age 34.7 Yet, we expect youth whose lives have been one rejection after another to leave their “home” of state custody permanently at age 18, or at age 21, if they’re lucky, without a dime to their name.

Federal Law

Chafee Foster Care
Independent Living Program
In 1999, Congress created the Chafee Foster Care Independent Living Program (known as “Chafee”), which provides up to $140 million a year to states for programs that serve youth in foster care between the ages of 14 and 21.8 Commonly called “independent living services,” these programs assist with employment, education, vocational training, sexual and preventive health, money management, and household skills. All states and contract agencies have independent living programs, which they are supposed to encourage youth to attend (though they cannot require them to do so). Some states provide stipends to youth who choose to participate.9

Chafee also requires that each young person in foster care, age 16 and over, have an independent living plan in writing. The plan must include a “description of the programs and services which will help the youth prepare for the transition from foster care to independent living.” This requirement applies to all young people ages 16 and older, regardless of their permanency plan/goal (i.e., even if it is reunification or adoption).

Although Chafee describes the services and planning states must provide adolescents to receive Chafee funds, it grants states wide latitude in how to use the money.10 Across the country, everyone is talking about a “housing crisis.” For youth who age out of foster care, just finding a place to sleep each night is always a struggle. We know that nationally, 54% of recently aged-out youth are homeless or unstably housed. In addition, these youth face higher rates of unemployment, undereducation, teen pregnancy, and incarceration.

What’s Inside:

66 CASE LAW UPDATE
76 EXPERT EXCHANGE
79 POLICY UPDATE
80 RESEARCH IN BRIEF

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country, the type and efficacy of services vary widely,\textsuperscript{12} and serious problems exist, such as a lack of infrastructure to implement programs\textsuperscript{13} and inaccurate reporting.\textsuperscript{14} Another shortcoming is that Chafee lacks a mandate prohibiting states from discharging a young person to homelessness.

Chafee provides scarcely enough money to serve the aging-out population, whether it is the official 24,000, or the more likely 50,000+ young people per year. Many states struggle to serve even half the youth in their jurisdictions with the funding now available. In this period of tightening state and federal budgets, this problem is getting worse.

Under Chafee, the federal DHHS was also supposed to issue regulations requiring states to collect and report data on outcomes of youth aging out of foster care; final regulations establishing the National Youth in Transition Database were only recently enacted, on February 26, 2008.\textsuperscript{15} Beginning in October 2010, the federal government will require states to submit standardized information on all 17 year olds still in foster care, with follow-up from the same group at ages 19 and 21. These reports must include whether the state is providing housing assistance.\textsuperscript{16}

**Federal Reimbursement of Foster Care Costs**

The other way the federal government is directly involved with state foster care systems is through federal reimbursement for foster care costs under Title IV-E of the Social Security Act. However, states can only claim these funds for youth under age 18. This means the funding available under Chafee is the sole source of federal money for youth ages 18-21 who are in foster care. And, since only 30% of Chafee funds can be used for room and board,\textsuperscript{17} states that continue sheltering youth over age 18 in foster placements must do so primarily at their own expense.

According to recent federal data, only three states and the District of Columbia provide full foster care benefits to youth up to age 21, though many others authorize jurisdiction and/or offer various forms of services to youth ages 18-21 (state laws are described below).\textsuperscript{18}

If the Foster Care Continuing Opportunities Act passes,\textsuperscript{19} federal funding would match that of the state and county for all costs related to foster care for youth ages 18-21. However, even if this legislation takes effect, it would only enable youth to be housed up to age 21. It would not solve the problem of where these young people go after 21; even in states where youth remain in foster care until 21, they still face enormous rates of homelessness.\textsuperscript{20}

Although providing young people with more time in foster care probably helps, it only delays the inevitable. Planning must occur for every youth and enough housing programs must be available throughout the country (discussed below).

**Other Supports**

Beyond Chafee and federal reimbursement for foster care costs, there are other links between the federal government and potential housing for aged-out youth. Federal statutes provide funding for:

- **Transitional Living Program (TLP) for Homeless Youth.**\textsuperscript{21} Facilities supported by this law are only available for youth under age 21.

- **Section 8 vouchers.**\textsuperscript{22} Under the Family Unification Program (FUP), local housing authorities can extend priority for Section 8 vouchers to youth aging out. Learn more by visiting [www.hud.gov/progdesc/famuni8.cfm](http://www.hud.gov/progdesc/famuni8.cfm).

- **Public housing.** Some jurisdictions create a preference for aged-out youth (e.g., New York City & Richmond, VA). For more information, see [www.hud.gov/progdesc/pihindx.cfm](http://www.hud.gov/progdesc/pihindx.cfm).

- **Specialized housing for adults with mental disabilities or who seek treatment for substance abuse.** The U.S. Department of Housing and Urban Development’s Section 811 Supportive Housing for Persons with Disabilities funds programs such as Iowa City Housing Information, [www.jeonet.com/city/planning/ichi/iid.htm](http://www.jeonet.com/city/planning/ichi/iid.htm); New York State Campaign for Mental Health Housing, [www.campaign4housing.org/members.html](http://www.campaign4housing.org/members.html); West Central Illinois Continuum of Care, [www.wcicc.com/HousingDirectory](http://www.wcicc.com/HousingDirectory/).

Over 60 federal funding streams are available to states, if they seek them out, to assist youth discharged from foster care.\textsuperscript{23}

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**Practice Tips**

- Find out what your state/county’s independent living program entails and make sure your clients are enrolled, starting at age 14.

- Make sure your clients have independent living plans and that these plans are reviewed in court at every hearing. Obtain court orders if necessary so that agencies comply with each aspect of the plans. Follow up with caseworkers outside of court on independent living plans and services.

- Find out about federally funded housing programs in your county and admission requirements. Some programs may not be directly linked with child welfare agencies, and caseworkers might not be aware of them, but youth aging out of foster care can be still eligible.

- Consider engaging in efforts, such as writing your senators and advocating with your organization, about passing the Foster Care Continuing Opportunities Act.
State Law

State laws vary widely regarding the age of discharge from foster care and what foster care means for youth over age 18.

Age of Discharge

The U.S. Department of Health and Human Services conducted a study in 2006, to which 45 states and the District of Columbia responded (see chart at right.) Although this survey shows that youth in most states can remain in foster care until age 21, 22 and 23, the survey did not ask whether the states financially support foster placements after 18. If not, then allowing youth to stay “in care” is meaningless. Further, congressional research only confirms that three states (Illinois, New York, and Vermont), and the District of Columbia, provide state foster care maintenance payments (or similar payments) for young people over age 18. The primary support that other states offer youth over age 18 is Medicaid and educational assistance.24

What Happens after Foster Care Payments End

Whenever a youth’s foster care maintenance payment is cut off, the youth must find a place to live. The only way a young person can remain in her foster placement is if the placement is in a supportive housing program that has additional funding from another source (these programs are described below); or if the foster parent lets the young person stay without receiving payment. If neither of these is the case, the youth will become homeless on her birthday, unless she has secured her own apartment (through Section 8, public or supportive housing, or other means) which she can move in to right away.

Housing Subsidies

Aside from the availability of Section 8, public housing, and supportive housing programs for youth aging out of foster care, some states also offer housing subsidies upon leaving foster care for one-time moving expenses, furniture, and the like. For example, in California all youth receive a one-time grant of up to $1,000 for security deposit and move-in expenses; while in New York, youth are eligible to receive up to $3600.25 These grants are not enough to pay ongoing rent, but they can help youth with ancillary costs as they transition from foster care.

Preventing Homelessness

Some states mandate that youth cannot be discharged to homelessness,26 but these laws are difficult to enforce. Once the youth is no longer under the jurisdiction of the juvenile/family court, that court cannot issue any orders. It may be possible to seek recourse in another civil court,27 but this would only be effective if it forces the agency to continue housing the youth, or to find and pay for a new home. If the civil court cannot or will not issue such an order, or the case gets backlogged on a court calendar, time is probably better spent aggressively seeking housing for the youth through community organizations and programs (described below).

For states that do not support youth financially after age 18, but do allow the family/juvenile court to retain jurisdiction (the exact number of states like this is unclear; according to the Health and Human Services survey described above, it may be 28, but another study finds it is 22 states28), claims could potentially be brought in family/juvenile court when agencies unlawfully discharge young people to homelessness. Again, the goal would be to obtain a court order mandating the agency to continue providing housing to the young person until he can be released without becoming homeless.

Restoring Juvenile Court Jurisdiction

Some states that can retain jurisdiction/custody of youth after age 18 (whether funded or not) allow a young person to be brought back in to foster care. This occurs if a youth has chosen to leave before the cutoff age but becomes homeless or unable to function on her own.29 The young person’s case can usually be restored to the calendar through a motion.

Court Approval before Discharge

Note that in some states, a youth cannot be discharged from foster care unless the court authorizes it.30 This usually entails a hearing in which the youth and/or agency presents a

<table>
<thead>
<tr>
<th>Age of Discharge from Foster Care</th>
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<tbody>
<tr>
<td>Maximum cutoff for foster care is 18. FL (1)</td>
</tr>
<tr>
<td>Youth may remain in care until age 19 CA, NE, NH, WI, VT, UT (6)</td>
</tr>
<tr>
<td>Youth may remain in care until age 20 AK, IA, MI (3)</td>
</tr>
<tr>
<td>Youth may remain in care until age 21 AL, AZ, AR, DE, GA, ID, IL, IN, KS, KY, ME, MD, MN, MO, MT, NM, NJ, NV, NY, NC, ND, OH, OK, OR, PA, SC, SD, VA, WA, WV, WY, DC (32)</td>
</tr>
<tr>
<td>Youth may remain in care until age 22 MA, TX (2)</td>
</tr>
<tr>
<td>Youth may remain in care until age 23 CO, CT (2)</td>
</tr>
<tr>
<td>No response HI, LA, MS, RI, TN, PR (6)</td>
</tr>
</tbody>
</table>

Source: Congressional Research Service, “Services for Youth Emancipating from Foster Care,” Memorandum to Senator Barbara Boxer at 12 (2007).
discharge plan, which includes where the youth will live upon release from custody. However, if, according to state statute, the youth is no longer under the court’s jurisdiction or in state custody by virtue of age, this law has no effect; the court cannot continue reviewing the case, and the agency is not legally responsible for the youth any more.

Even if your state does not require court approval before discharge, there is likely a statute or directive mandating that the agency hold a discharge conference before the youth leaves care.31 Regardless of whether the case is still on the court calendar or the state technically retains custody, the agency should hold such a meeting, where the details of the young person’s discharge plan are discussed and any available supports are put in place (aftercare services are discussed below).

--- Practice Tips ---

- Begin planning for the discharge of all of your adolescent clients early, years before they turn 18 (i.e., at age 14). The discharge plan, which is essentially the final independent living plan must first and foremost include where the youth will live, with multiple backup plans. The discharge plan should include alternate housing even if the permanency goal is return to parent or adoption, because these goals often become unrealistic as the youth approaches age 18 and desires to live on her own (and may try to do so even if she does not have a place to go, thus winding up on the street or couch-hopping.)

- Learn the specifics of your state’s laws regarding discharge plans, when and how a youth may be discharged, and whether discharge to homelessness is statutorily prohibited. Strategize on how to most effectively use these laws, whether in or out of court.

- If your state allows youth to remain in foster care in some capacity after age 18, learn what this entails and whether there are “requirements” for the youth (i.e., that he be in school, has special needs, etc.). Counsel your client on the benefits of staying in care, if any.

- If a client becomes homeless or otherwise needs to return to foster care after discharge, bring the case back to court. Be sure the youth is still of an age in which the state can retain custody/court has jurisdiction.

Housing Programs

A variety of housing programs and subsidies are available to youth who are aging out, though advocates agree there are not enough to serve the enormous need.

Federal Housing Programs

As discussed above, the federally funded Section 8 program can help youth obtain their own apartments. Youth must apply as soon as they are eligible because the vouchers take months and sometimes years to process.

In many states, youth aging out are also eligible for public housing. Again, it can take months/years for an apartment to open up, so a young person must apply as soon as he is allowed (before his discharge date).

Supportive Housing Programs

Across the country, supportive housing programs serve youth aging out of foster care. These programs fall in two categories:

- Congregate programs — youth live together in one building
- Scattered site programs — youth are placed in apartments (with or without roommates)

In either case, youth almost always must engage in services, such as case management, counseling, and life skills training; youth may also have to attend school/vocational training and/or be employed. In some programs, youth must pay a portion of their rent, perhaps not at the beginning but in gradually increasing increments; other programs require Section 8 vouchers, or other subsidies, that the youth will have to obtain to be admitted.

Some notable supportive housing programs are:

- First Place for Youth, Oakland, California
- Independent Living Services program, Alameda County, California
- Orangewood Children’s Foundation, Orange County, California
- Connecticut’s Community Housing Assistance Program
- Rediscovery House, near Boston, MA
- Chelsea Foyer, Edwin Gould Residence, and Schafer Hall in New York City
- Lighthouse Youth Services, Cincinnati, OH

Supportive housing programs can be transitional or permanent. Transitional programs are time-limited, usually housing a young person for 18 to 36 months, during which the program is supposed to help the youth stabilize and find a permanent place to live. Some transitional programs allow youth to start living there while they are still in foster care, but this counts against their time limit in the program.

Specialized Housing

As noted above, youth may also be eligible for other kinds of supportive housing, such as programs that serve the mentally disabled or substance abusers. The services in these programs are not tailored to youth aging out, and most residents will be significantly older — both factors to keep in mind when considering whether a client should apply.
Transitional Living Programs
Youth under age 21 can use Transitional Living Programs (TLPs) funded by the Federal Homeless and Runaway Act, such as the Covenant House Program. These are time-limited programs and youth over age 21 will not be admitted for the first time under any circumstance (sometimes a young person can stay in a TLP after her 21st birthday if she has been living there successfully and has no other place to go).

More programs like these are needed throughout the country. States can develop a variety of housing types for aging-out youth with special financing programs and incentives. For example, New Jersey has a partnership between its Department of Human Services and its Housing and Mortgage Finance Agency to make low-interest financing available to non-profit agencies and private developers to create affordable housing for aging-out youth.32

Practice Tips
- Make sure your adolescent clients apply as soon as possible to all available housing programs in your area.
- Be mindful of the vast paperwork and documentation that these programs require—i.e., social security cards, birth certificates, state-issued identification, probation records if applicable, etc.—and start planning how to obtain them immediately. Obtain court orders for the state/agency to assist with this process (most states must give documentation to youth aging out33).
- Zealously advocate for your client to be admitted to these housing programs. It can take considerable follow-up to secure a slot. Also, be aware that many programs attempt to take only the “cream of the crop,” and you may have to highlight the strengths of your client to get him in.

- Find out whether your client has been arrested and/or convicted of anything in juvenile or criminal court. This could affect her applications and you may need to have records sealed, expunged, or provide evidence/documentation that the youth is “rehabilitated.”
- If your client has children, find out which programs in your area are for families (and how many children are allowed). Be aware that background checks are sometimes required on the non-custodial parent, even if that person has never been in the child’s life. Discuss this with your client and obtain all the necessary information.
- Make sure any program your client has applied to is specifically detailed in her independent living/discharge plan, and the program is described on the record in court. Court orders may be necessary for documents, admission, etc.
- Engage in efforts, such as administrative and legislative advocacy, to raise awareness among lawmakers, real estate developers, affordable housing professionals, homeless advocates, etc. about the housing crisis facing youth aging out of foster care. Promote tax breaks and other incentives to build and fund housing for this needy population.

Other Advocacy Efforts
There are other ways to advocate for adolescents in foster care that can improve their housing situation when they age out.

Adult Connections
Most state statutes now require that adolescents in foster care have “a significant connection” to at least one adult before discharge.34 This person/people must be identified as soon as possible and should actively participate in the independent living plan. It is the agency’s responsibility to cultivate these relationships early through visitation, phone calls, and other contact between the youth and the adult. The agency assists the adult with whatever is necessary to support the youth before and after foster care.

Flexible Foster Care Arrangements
Because adolescents in foster care often do not fit into the conventional “return to parent” or “adoption” permanency goals, many states are attempting to be more flexible with foster care arrangements. These arrangements can turn into transitional or permanent homes after foster care. For example, in some states “kinship” foster care includes godparents, neighbors, family friends and others whom the youth identifies.35 It is far more likely that a friend will become an ongoing resource for a young person after foster care than a non-kinship foster parent. Also consider planning with a youth’s family of origin, as young people invariably return to a biological parent after foster care, if not to live, then for financial, child care, or other supports.36

Subsidized Guardianship
Another option, available in 39 states, that may be especially helpful for adolescents in foster care is subsidized guardianship.37 Subsidized guardianship allows relatives and other caregivers to become permanent legal guardians for youth (freeing the youth from foster care at any age) when neither return to parent or adoption is appropriate. If a youth is living with a guardian by the time she reaches 18 or 21, she will probably not be arbitrarily thrown out on her birthday.
Aftercare

Aside from nurturing these invaluable relationships, some states/foster care agencies, as well as independent organizations, offer aftercare services, which youth can access when they are no longer in state custody. In fact, Chafee funding may be used to serve youth who are discharged between 18 and 21 (although because it so limited, states devote most of their Chafee money to youth still in foster care). Some state laws mandate a period of aftercare or casework monitoring following discharge.

Ideally, aftercare services, which include housing, education, employment, and child care assistance, would be available to all young adults aging out of foster care. Too often these youth are unprepared to face challenges which we would never expect other young adults to handle on their own.

Practice Tips

- Make sure all of your adolescent clients have significant connections to adults that the agency is fostering, and not hindering. Make sure these relationships are part of each youth’s independent living plan and that they are described in court. Obtain court orders if necessary to force the agency to comply.

- Advocate early and often for alternative foster care arrangements, and/or for a youth to reconnect with her family of origin, if consistent with the youth’s wishes. Obtain court orders when necessary.

- Advocate for subsidized guardianship if it is available in your state and is consistent with your client’s wishes, after counseling him on this option.

- Find out what kind of aftercare services are available in your area and the laws pertaining to aftercare in your state. If consistent with your client’s wishes, advocate for admission into any such program. Where possible or necessary, obtain court orders.

Countless youth struggle to secure housing after aging out of foster care. As a society we should continue to support these young people. So far we have failed to fulfill this responsibility. More housing of all forms is necessary to solve the crisis. Lawyers representing youth can improve the situation through zealous in and an out-of-court advocacy, and by increasing awareness and reforming laws at the local, state, and federal levels.

Dale Margolin is an assistant clinical professor of law and the director of the Family Law Clinic at University of Richmond School of Law.

Endnotes


4 See www.pbs.org/newshour/bb/youth/jan- jun05/foster_case_5-19.html

5 U.S. Census Bureau, www.census.gov


8 42 U.S.C. § 677(h). States must match the federal contribution with 20% from state-authorized funds.

9 For example, N.Y. Comp. Codes R. & Regs. tit. 18, § 430.12(0)(2)(i)(b)


16 45 C.F.R. §§ 1356.82 & § 1356.83(g)
Upcoming Conferences

NACC 31st Annual National Juvenile and Family Law Conference
Savannah, GA, August 3-6, 2008
This conference is designed for attorneys who practice juvenile (dependency and delinquency) and family law. Conference sessions focus on abuse and neglect, adoption, foster care, juvenile justice, family law, ethics, policy advocacy, and children’s legal office programs. Presenters are leading experts and practitioners in the field. To learn more, visit www.naccchildlaw.org

The 15th Midwest Adoption Conference
Deerfield, IL, Sunday, November 2, 2008
An educational conference for adoption professionals, foster and adoptive parents, and adopted children. This year’s conference features Dr. John Raible, who has been educating audiences about transracial adoption for more than 30 years. For more information, visit www.midwestadoption.org

Save the Date:
National Conference on Health and Domestic Violence
New Orleans, LA, October 8 - 10, 2009
The National Conference provides professional education on the latest research and innovative health prevention and clinical responses to domestic violence. Co-chaired by 35 organizations, it is hailed as “the best violence related conference” in the country.
For more information, contact Anna Marjavi at anna@endabuse.org, ph: 415/252-8900 or visit www.endabuse.org/health/conference/

13 E.g., in New York, any young person who has been remanded to foster care is entitled to have the state conduct an emergency home study for placement with a relative or nonrelative who has “a significant prior relationship with the child’s family.” A nonrelative may include, but is not limited to, “a child’s godparent, neighbor, family friend, or an adult with a positive relationship with the child.” N.Y. Comp. Codes R. & Regs. tit. 18 § 443.1 & 443.7; See also “Emergency Home Studies for Youth Placed in Foster Care,” ACS Memorandum, May 25, 2005; N.Y. Fam. Ct. Act. §§ 1017(2)(b), 1017(2)(b).
16 In the Spirit of the Children, in New York City, provides many services to youth after foster care, with no age or time limit, and is wholly independent from the state.

Vol. 27 No. 5 Child Law Practice 75