Understanding Federal Laws and Programs

The following federal laws and grant programs support judges' efforts to meet the health care needs of very young children in foster care.

Medicaid

The Medicaid program is jointly funded by the federal and state governments and administered by states according to federal guidelines. Most foster children can receive Medicaid because program requirements are tied to eligibility for state reimbursement for foster care expenses under Title IV-E of the Social Security Act. The federal government requires that "mandatory" services, such as physician and hospital services, family planning, and laboratory and x-ray services be included in all states' Medicaid programs, while other, "optional" services, such as prescription drugs, vision, dental, home-based care, and physical therapy may be included if a state chooses.[1]

Under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) provisions of Medicaid, however, *children* are entitled to all of the services in the federal law's "optional" list, whether or not the state chooses to offer those benefits to adults.[2] EPSDT requires that state Medicaid programs provide a comprehensive set of screening, diagnosis, and treatment services to children under age 21 enrolled in Medicaid. This includes periodic screenings at established age-appropriate intervals for mental and physical health issues, as well as additional screenings if a problem is suspected. The screening component "includes a comprehensive health and developmental history, an unclothed physical exam, appropriate immunizations, laboratory tests, and health education."[3] Despite the broad reach of this benefit, studies show it is underused, causing many children's health needs to go unidentified. Courts can ensure that such services are provided to children in care by routinely asking about screening results.

Two services available for children under EPSDT may be particularly helpful for children in foster care:

- **Targeted Case Management (TCM):** Thirty-eight states use TCM services to provide coordinated care and access to needed medical services for children in foster care.[4] Using these case management services makes it more likely for children to receive physician, prescription drug, hospitalization, rehabilitative, and mental health services than those who do not receive TCM.[5] In states where TCM is used, judges should routinely ask if TCM is being provided for children in care.

- **Rehabilitative Services:** Rehabilitative services may include services to reduce physical or mental disabilities and ensure optimal functioning. The services can also include certain specialized placements including therapeutic foster care and other family support services that improve children's functioning. This option is sometimes used to permit a child in care to remain in the least restrictive setting while receiving essential mental health services.

Children's Health Insurance Program (CHIP)

Through the 2009 Children's Health Insurance Program Reauthorization Act (CHIPRA),[6] CHIP continues to provide health insurance to low-income children whose families earn too much to qualify for Medicaid.[7] In combination with Medicaid, CHIP aims to decrease the number of uninsured children. The program is an essential source of health insurance for children in the child welfare system who are not eligible for Medicaid or who are transitioning out of care and therefore losing their eligibility for Medicaid. Judges should ensure that foster children will have health insurance when they are no longer in care by requiring that caseworkers and reunifying or adoptive families address this issue while the child is still under the court's jurisdiction.

Title V Maternal and Child Health Block Grant to States Program

This program provides funding for a range of health-related services, such as respite care for families caring for special needs children, or outreach to educate low-income families about food stamps.[8] States have wide discretion on what to fund with these grants. Some families in your court may benefit from services your state has chosen—check with your state's Title V director. (A list is available at https://perfdata.hrsa.gov/mchb/mchreports/link/state_links.asp.)

Healthy Start

Healthy Start grants fund local programs that address infant mortality, low birthweight, and racial disparities in infant health. Services offered include case management to help families access health care and other resources, peer mentoring for parents, and postpartum depression screening. Efforts are also made to connect families to other services to address their specific issues, including housing

or employment barriers, substance abuse, domestic violence, or mental health problems. Encourage caseworkers, attorneys and families to look into the services offered by a local Healthy Start program for infants and/or pregnant women. For more information and to access a list of local programs, visit www.healthystartassoc.org/ and click on "Directory."

Health Insurance Portability and Accountability Act (HIPAA)[9]

Enacted in 1996, HIPAA prevents the use or disclosure of protected health information (PHI) by certain entities, including child welfare agencies *if* they are considered health care providers. (The Department of Health and Human Services provides a tool to determine when an entity is a health care provider at www.cms.hhs.gov/apps/hipaa2decisionsupport/.) PHI includes any health information that could reasonably be used to identify an individual.

Several exceptions may apply in child welfare proceedings, however. PHI may be used or disclosed when:

- reporting abuse or neglect; and
- the information relates to judicial or administrative proceedings if the request is made through a court order or administrative tribunal.

The exceptions under HIPAA provide for sharing of information between the child welfare agency, courts, and health providers for children, although questions still remain about its application in practice, including the ability of parents to access the records of their children in care.[10] Respecting the privacy rights of even the youngest children in care now can protect them against future discrimination.

Child Abuse Prevention and Treatment Act (CAPTA)/Individuals with Disabilities Education Act (IDEA) Part C

CAPTA requires that states refer children under age three who have a substantiated case of child abuse or neglect for screening for early intervention services funded by Part C of IDEA.[11] This federal grant program helps states implement a comprehensive system for early intervention referrals and services. States have some discretion in setting evaluation criteria, therefore eligibility definitions vary significantly from state to state. Once a child is deemed eligible for early intervention services, an Individual Family Services Plan (IFSP) must be developed within 45 days of referral.[12] IDEA Part C can help ensure that very young children's

developmental needs are met through services such as occupational and speech therapies, counseling, nursing services, transportation, and more. Ask if each infant and toddler in your courtroom has been evaluated and has received recommended services.

Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act)[13]

The Fostering Connections Act addresses many issues that promote permanency and affect the health and well-being of very young children in foster care, including:

- making it easier for relatives to care for children;
- increasing adoption incentives and support;
- increasing resources that help birth families stay together or reunite;
- placing greater priority on keeping siblings together;
- helping students stay in the same school or promptly transfer when they enter care;
- providing more direct support to American Indian and Alaskan Native children; and
- increasing support for training of staff working with children in the child welfare system.

The Fostering Connections Act also requires states to develop plans to coordinate and oversee health services for children in foster care, in consultation with health care and child welfare experts. Each state's plan must include a coordinated strategy to identify and respond to children's health care needs, including mental and dental health.

State plans must address:

- schedules for health screenings;
- monitoring and treatment of identified needs;
- sharing and updating of health records;
- continuity of care;
- monitoring of prescription medications; and
- collaboration between the state and health professionals for assessment and treatment of health issues.

Endnotes

1. *Medicare: A Primer*. Menlo Park, CA: The Henry J. Kaiser Family Foundation, January 2009. Available at www.kff.org/medicaid/upload/7334-03.pdf.

2. Ibid.

3. *EPSDT Program Background*. Rockville, MD: Health Resources and Services Administration. Available at www.hrsa.gov/epsdt/overview.htm#1.

4. Geen, R., A. Sommers and M. Cohen. "Medicaid Spending on Foster Children." Urban Institute Child Welfare Research Program, Brief No. 2, August 2005. Available at www.urban.org/UploadedPDF/311221_medicaid_spending.pdf.

5. Ibid.

6. P.L. 111-3.

7. Klain, E. "What Passage of CHIPRA Means for Child Advocates." *Child Law Practice* 28(1), March 2009, 12.

8. *Block Grant Program*. Rockville, MD: Health Resources and Services Administration, Maternal and Child Health Bureau. Available at https://perfdata.hrsa.gov/mchb/mchreports/LEARN_More/Block_Grant_Program/block_grant_program.asp.

9. P.L. 104-191.

10. Klain, E. "Federal Confidentiality Laws and Dependency Courts: Managing Competing Interests." *The Judges' Page Newsletter*, February 2006. Available at www.nationalcasa.org/download/Judges_Page/0602_mental_health_issue_0036.pdf.

11. U.S. Department of Health and Human Services, Administration for Children and Families. *Child Welfare Policy Manual*. Available at www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=354. 20 U.S.C.A. § 1437.

12. Child Welfare Information Gateway. *Addressing the Needs of Young Children in Child Welfare: Part C—Early Intervention Services*, 2007. Available at www.childwelfare.gov/pubs/partc/partc_a.cfm.

13. P.L. 110-351.