



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
Administration on Children, Youth and Families
330 C Street, S.W.
Washington, D.C. 20201

March 27, 2020

Dear Child Welfare Legal and Judicial Leaders,

The Children's Bureau (CB) is aware of questions and concerns regarding a number of child welfare issues in light of the COVID-19 public health emergency, including whether CB can waive statutorily required judicial proceedings. As discussed and delineated below, CB cannot waive these statutory requirements but expects that courts and states will work together to determine how best to balance child-safety related statutory requirements against public-health mandates. But as delineated below, as situations require, courts can and should use flexible means of convening required hearings.

In the wake of Hurricane Katrina, CB issued guidance about these issues, which appears in the Child Welfare Policy Manual. See generally ACYF-CB-IM-05-06. Among other things, the policy manual and the guidance explain the requirements related to judicial proceedings, as well as the implications for not holding such proceedings in a timely manner.

In all cases, title IV-E of the Social Security Act (the Act) requires that the following hearings be held and determinations made:

- **Contrary to the welfare (judicial determination):** This critical judicial determination must be made in the first court proceeding that sanctions the child's removal. If that does not occur, the child is ineligible for title IV-E foster care maintenance payments (title IV-E) for the duration of the child's foster care episode.
- **Reasonable efforts to prevent removal (judicial determination):** This determination—an important statutory protection—must be made within 60 days of the child's removal; if not conducted timely, the child will not be eligible for title IV-E for the duration of the foster care episode.
- **Reasonable efforts to finalize the permanency plan (judicial determination):** This judicial determination must be made within 12 months of the child entering foster care (as defined at §475(5)(F) of the Act and 45 CFR 1355.20(a)). If not conducted in a timely manner, the agency may not claim title IV-E until it has secured the determination. Once made, the agency may again begin claiming title IV-E on behalf of the otherwise eligible child. Note that this determination may be made in any type of judicial proceeding, including a permanency hearing.
- **Six month review and 12 month permanency hearings:** These hearings ensure that the court is aware of what is happening with the child on a routine basis and that the child's case continues to progress. They can be held in any type of proceeding; neither impacts a child's title IV-E eligibility or the agency's ability to claim title IV-E on behalf of an

otherwise eligible child, as long as the requisite judicial determinations (described above) are made. Nonetheless, these hearings are to be conducted in a timely manner.

Despite the public health crisis that exists, it is critical that child welfare agencies and courts work together to ensure that the requisite judicial proceedings continue during this time of uncertainty; each is 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. 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. States and courts should adhere to their own statutory and regulatory requirements about conducting such hearings in person or through other means, including holding such proceedings via videoconference and/or telephonically.

CB believes that justice requires that parents and children continue to be able to meet, speak, and stay in frequent communication with their attorneys. Therefore, we urge all attorneys, courts, Court Improvement Programs (CIPs) and administrative offices of the courts to work together to ensure that parents, children, and youth are well represented and able to participate in all proceedings in which judicial determinations are made, whether they are conducted in-person or virtually. Similarly, we expect that all parties will continue to receive timely notice of all proceedings, as required by the Act. States and courts are reminded that hearings and notices must be accessible to limited English proficient individuals and individuals with disabilities, in accordance with Federal civil rights laws. CB urges all attorneys to keep in close contact with their clients, in any way they can, and to bring urgent issues to the attention of the courts and all parties. Additionally, in order to practice in a manner consistent with constitutional principles and to serve the best interests of children, CB urges all attorneys, courts, CIPs and administrative offices of the court to:

- Refrain from making sweeping, blanket orders ceasing, suspending, or postponing court hearings;
- Ensure that important decisions about when and how hearings are conducted are made on a case-by-case basis in accordance with the facts of each individual matter;
- Encourage attorneys to file written motions raising issues of immediate concern;
- Make maximum use of technology to ensure due process where in-person hearings are not possible or appropriate;
- Ensure parents and youth have access to technology such as cell phones, tablets, or computers with internet access to participate in hearings or reviews and maintain important familial connections;
- Consider utilizing CIP funds to support and enhance virtual participation for parents, children, youth, and their attorneys in hearings and reviews; and
- Encourage attorneys to resolve agreed-upon issues via stipulated orders. For example, if all parties agreed that a child in foster care can be reunified with his/her family immediately, that issue should be resolved via a stipulated order, rather than waiting weeks or months for an in-person court hearing.

CB is also aware of instances where judges have issued blanket orders suspending or drastically reducing family time (visitation) between children in foster care and parents, sometimes indefinitely. Family time is important for child and parent well-being, as well as for efforts toward reunification. Family time is especially important during times of crisis. CB strongly discourages the issuance of blanket orders that are not specific to each child and family that suspend family time; doing so is contrary to the well-being and best interest of children, may contribute to additional child trauma, and may impede the likelihood of reunification. With respect to family time, CB urges all courts, CIPs, and administrative offices of the courts to:

- Discourage or refrain from issuing blanket court orders reducing or suspending family time;
- Be mindful of the need for continued family time, especially in times of crisis and heightened anxiety;
- Remain cognizant that interruption or cessation of family time and parent-child contact can be traumatic for children;
- Continue to hold the child welfare agency accountable for ensuring that meaningful, frequent family time continues;
- Become familiar with ways in which in-person visitation may continue to be held safely;
- Encourage resource parents to provide transportation to, and supervision of, family time in order to limit additional people having to be involved to limit possible exposure to COVID-19;
- Consider the use of family members to supervise contact and to engage in visitation outdoors, where feasible;
- Inquire whether parents and resource parents have access to cell phones and computers with internet access to ensure virtual connections where in-person family time is not possible;
- Encourage use of technology such as video conferencing, phone calls and other readily available forms of communication to keep children, parents, and siblings connected;
- Ask parents their preference when deciding how to proceed with family time as some parents may prefer to meet via technology due to health concerns; and
- Consider whether children may be reunified with their parents in an expedited manner if the child's safety would not be jeopardized.

It is also critical that agencies and courts take all measures possible to continue ensuring that parents and children receive services and treatment. Interruptions in court-ordered services or treatment in case plans due to lack of provider availability during the COVID-19 pandemic are likely to present significant barriers for parents working toward reunification. Lack of, or inability to access, treatment or services due to provider closures during the pandemic should not be interpreted as a lack of parental compliance, and might indicate an agency's failure to make reasonable efforts to reunify. This may constitute a compelling reason not to file a petition to terminate parental rights under §475(5)(E) of the Act simply because a child has been in foster care for 15 months of the last 22 months. CB urges courts to be mindful of the circumstances in each case.

With respect to parental services and treatment, CB urges all courts, and administrative offices of the courts and CIPs to:

- Inquire actively about, and monitor closely, the availability of treatment and other services for parents;
- Inquire whether parents and resource parents have access to landlines, cell phones and computers with internet access to ensure virtual connections where in-person time is not possible; and
- Encourage use of technology to continue treatment and services where in-person services or treatment may temporarily be unavailable.

Finally, CB is aware that there are mandated costs or fees that litigants must pay in order to participate in dependency hearings via certain technology platforms in some jurisdictions. CB urges any jurisdiction that requires payment from litigants to suspend such charges in light of the present circumstances. A comprehensive list of low or no cost communication platforms and applications used currently around the country for participation in hearings and reviews or attorney communication with children and parents is included as an attachment to this letter.

We thank you for your efforts to protect the safety of children and rights of parents, and to ensure that meaningful judicial oversight remains intact during these difficult times. Vulnerable children and families around the country are counting on you to do so.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jerry Milner".

Jerry Milner
Associate Commissioner
Children's Bureau

A Message on COVID-19 from the Children's Bureau

Given the Coronavirus Disease 2019 (COVID-19) outbreak, we are aware of the impact that it may have on the populations you serve.

As our partners at the Department of Health and Human Services (HHS) continue to work closely with state, local, tribal, and territorial partners, as well as public health partners across the globe to respond to contain COVID-19, we want to inform you that the Centers for Disease Control and Prevention (CDC) at HHS continues to provide updates and guidance from medical professionals about how to protect you and those you serve from COVID-19.

We urge you to stay informed and vigilant, and share information with your staff, subrecipients, and community partners and stakeholders. For regularly updated information from the CDC, please visit: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Everyday preventative actions can include the following:

- Cover your nose and mouth with a tissue when you cough or sneeze; throw the tissue away immediately after you use it.
- Wash your hands often with soap and water for at least 20 seconds, especially after you cough or sneeze.
- Avoid close contact with people who are sick. When you are sick, keep your distance from others to protect them from getting sick, as well.
- Try not to touch your eyes, nose, or mouth. While it may seem simple, germs often spread this way.
- At the workplace, wash your hands frequently and practice caution when coming into contact with commonly touched surfaces like door handles, handrails, and elevator buttons.

Additionally, the CDC recently issued a series of guidance documents on how to prepare and take action for COVID-19. Some of these guidance documents may be relevant to your work and the populations you serve. <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>

Employees planning domestic travel should routinely check CDC's website for information about COVID-19 for travelers and travel-related industries and take into consideration the location and purpose of their travel. <https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html>

Children Involved in the Child Welfare System

The CDC provides guidance and FAQs specifically on COVID-19 and children:

<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html>

Foster care providers and agency case managers can make use of the CDC's guidelines for how to prevent the disease in educating children about the disease: <https://www.cdc.gov/coronavirus/2019-ncov/about/prevention-treatment.html>

Foster Care Providers

The CDC provides specific guidance for households that will be helpful to foster family home providers:

<https://www.cdc.gov/coronavirus/2019-ncov/community/home/index.html>

While the CDC does not provide guidance specifically targeted to the types of child care institutions in which some children in foster care reside, it does provide guidance for long-term care facilities that is of relevance to such placement types: <https://www.cdc.gov/coronavirus/2019-ncov/community/home/index.html>

Child Welfare Workforce

In addition to the guidance mentioned above for individuals regarding prevention, the Department of Labor's, Occupational Safety and Health Administration provides information concerning coronavirus: https://www.osha.gov/SLTC/novel_coronavirus/

It is critically important that child welfare agencies develop a process to remain informed of the ongoing updates and instructions from the CDC and state and local public health officials in order to make informed, fact-based decisions about meeting the needs of children in foster care during this time.

We encourage you to maintain contact with your local health department if you or your client exhibits symptoms that may be related to COVID-19.

Low or No Cost Technology Options for Virtual Participation and Contact

- Facetime - Video Calling
 - Get it on: Apple Products from the Apple App Store
 - Cost: Free
 - This is a video calling app that can only be downloaded from the Apple App store for video calling other Apple products
- Snapchat - Video Calling, Text Messaging, Video Messaging
 - Get it on: Android and Apple mobile devices.
 - Cost: Free
 - This is a video messaging app that allows all messages and conversations to not be saved.
- Whatsapp - Video Calling, Text Messaging
 - Get it on: Computers, and Android and Apple mobile devices.
 - Cost: Free
 - Whatsapp is an internationally used messaging app that is widely popular globally.
- Skype - Video Calling, Text Messaging
 - Get it on: Computers, web browsers, and Android and Apple mobile devices.
 - Cost: Free
 - Skype is a widely known video calling platform that uses Microsoft's AI technology for features such as live translations.
- Hangouts - Text Messaging, Video Calling
 - Get it on: Web browsers, and Android and Apple mobile devices.
 - Cost: Free
 - Google Hangouts is a robust communication platform on the web.
- Duo - Video Calling
 - Get it on: Android and Apple mobile devices
 - Cost: Free
 - This is the Google analog to Apple Facetime. But can be used on Android phones and iPhones.
- Signal / Telegram - Encrypted Text Messaging
 - Get it on: Android and Apple mobile devices
 - Cost: Free
 - Both Signal and Telegram are messaging applications that use end to end encryption.
- Facebook Messenger - Video Calling, Text Messaging
 - Get it on: Computers, web browsers, and Android and Apple mobile devices
 - Cost: Free
 - This is a communication service tied to Facebook's social network.
- Microsoft Teams - Video Calling, Text Messaging, Community Management, Productivity
 - Get it on: Computers, web browsers, and Android and Apple mobile devices.
 - Cost: Free
 - Teams is Microsoft's chat productivity application. It allows for collaborating and staying in contact with multiple people within the team.
- Discord - Video Calling, Text Messaging, Community Management

- Get it on: Computers, and Android and Apple mobile devices
 - Cost: Free
 - Discord is a robust community management tool. Create servers or rooms for different interests or teams to communicate and keep in touch.
- FreeConference / FreeConferenceCall / FreeConferenceCalling - Conference Calling Service that is Free
 - Get it on: Create the account online using an email address and use the service with a phone.
 - Cost: Free
 - Each of the listed above are not typos. Each is an individual company that provides conference calling for free.
- Google Voice - Cloud Based Phone Number
 - Get it on: Computers, and Android and Apple mobile devices
 - Cost: Free if used to make calls within the United States. Calls to other countries have a cost per minute.
 - Google Voice is a cost effective way to have a phone number and make phone calls so long as you have access to the internet.
- GotoMeeting
 - Get it on: Computers, and Android and Apple mobile devices
 - Cost: Free for two weeks.
 - Video conference calling for many people
- Marco Polo
 - Get it on: iphone and ipad
 - Cost: free
 - "video walkie talkie," a video chat app that lets you send quick messages back and forth.

In response to COVID-19 developments, some internet providers are offering free services to low-income families and households with students.

Free Comcast Xfinity internet

Comcast Xfinity is currently offering its [Internet Essentials](#) program free for two months to new customers. The internet provider is also automatically increasing speeds for all Internet Essentials customers.

Comcast Xfinity Wi-Fi hotspots are also open and free to use by anyone.

Free internet for students from Charter Spectrum

Households with students K–12 or university students can sign up for a new Charter Spectrum internet account to get the first two months of internet with speeds up to 100 Mbps for free.

Installation fees will be waived for those who qualify for the offer. Call 1-844-488-8395 to enroll.

Spectrum Wi-Fi hotspots are also currently open and free to use.

Free internet for students from Altice

Altice internet providers Suddenlink and Optimum are offering 60 days of free internet service for households with K–12 or college students. Internet speeds are up to 30 Mbps if you do not already have access to a home internet plan. To sign up, call 1-866-200-9522 if you live in an

area with Optimum internet service, or call 1-888-633-0030 if you live in an area with Suddenlink internet service.

Free low-income internet from Cox

Until May 12, 2020, Cox is offering the first month of its low-income internet program, [Connect2Compete](#), for free. The internet service is also providing free phone and remote desktop support for technical support during that time.

For more information from the college, go to:

www.highspeedinternet.com/resources/are-there-government-programs-to-help-me-get-internet-service