"Final Interagency Guidelines on Foster Care Services for Specific Children in Need of Services Funded through the Comprehensive Services Act"

Introduction

Why the Guidelines?

In December 2007, the State Executive Council adopted the "Final Interagency Guidelines on Foster Care Services for Specific Children in Need of Services Funded through the Comprehensive Services Act." The Guidelines resolved the long-standing problem of custody relinquishment, which refers to the practice of parents giving up legal custody of a child to the Department of Social Services (DSS) in order to access mental health treatment that the parent can no longer afford for the child. Typically, these are children who have chronic and severe emotional/behavioral problems that have drained the family over time both financially and emotionally. Prior to the adoption of the Guidelines, in some areas of Virginia the Code was interpreted that the only means of access to services, particularly for residential treatment, was for the parent to relinquish custody of the child to the local DSS to make the child "mandated" under the Comprehensive Services Act (CSA).

Background

Statutory Requirements

To understand the need for the guidelines, it is important to examine the statutory complexity of providing services to this population of children and families. The Code of Virginia through the Comprehensive Services Act for at-Risk Youth and their Families provides funding for foster care services, including both the prevention of foster care and the provision of foster care placement for children (Code of Virginia 2.2-5211 C) The Code defines "foster care services" as:

> "…the provision of a full range of casework, treatment and community services, including but not limited to independent living services, for a planned period of time to a child who is abused or neglected as defined in COV 63.2-100 or in need of services as defined in COV 16.1-228 and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board or the public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, or (iii) has been committed or entrusted to a local board or licensed child placing agency." COV 63.2-905

Review of the statute first notes that "foster care services" are defined as "a full range of casework, treatment and community services, including but not limited to independent living services…" Mental health treatment is considered to fall within this broad category of services.

Secondly, the statute defines two categories of children eligible for "foster care services", those who:

- are identified as abused or neglected as defined in §63.2-100 or
- meet the definition of a child in need or services as defined in §16.1-228.

Lastly, these two categories of children may be served in three separate and distinct ways when the child:

> "…(i) has been identified as needing services to prevent or eliminate the need for foster care placement
> (ii) has been placed through an agreement between the local board or the public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parent or legal guardians, or
> (iii) has been committed or entrusted to a local board or licensed child placing agency." COV 63.2-905

The Code of Virginia considers funding for all three of these categories to be "sum-sufficient", i.e., funding must be allocated to meet the need under the Comprehensive Services Act (COV 2.2-5211) The term "mandated" is commonly used to describe the sum-sufficient categories.

Eligibility

As noted above, a child is eligible for "foster care services" in Virginia if he or she meets the criteria set forth in statute as either an abused or neglected child or a child in need of services. Prior to the adoption of the Guidelines, only the Court had determined the latter. The Guidelines provide for the Family Assessment and Planning Team (FAPT) to determine that a child meets the statutory definition of a "child in need of services". An Eligibility Checklist is included which sets forth the statutory criteria for use in making this decision. Children with severe mental health needs may be eligible for CSA funding if determined to be in need of services by either the Court or the FAPT.

Services may be provided under the Guidelines in one of two ways; either through foster care prevention services in the home and community or with residential treatment through the parental agreement process described in §63.2-905. It is important to recognize that these categories do not overlap; i.e., treatment services to a child placed out of home through an agreement with the parent, where the parent retains custody, are not foster care prevention services, but are mandated in their own right by statute.

Agreements with Parents

Two types of parental agreements are permitted; DSS "Non-Custodial Foster Care Agreements" and CSA Parental Agreements.

Non-Custodial Foster Care Agreements are between the parent and the local Department for Social Services. Although the agency has 24 hour supervisory responsibility for the child, the

parent retains legal custody. Federal guidelines define foster care as "24 hour substitute care for all children placed away from their parents or guardians and for whom the State agency has placement and care responsibility" (45 CFR 1355.20). Legal custody of the child by the state child welfare agency (or its local counterparts) is not required in the federal definition. Children placed through non-custodial agreements are considered to be in foster care placement. All foster care requirements such as determination of eligibility for Title IV-E must be met. More information about non-custodial placements may be found in the Virginia Department for Social Services Foster Care Manual at VDSS Foster Care Manual

CSA Parental Agreements are those agreements between a parent or guardian who retains legal custody of the child and an agency designated by the Community Policy and Management Team (CPMT) other than DSS. The agency designated by the CPMT assumes case management responsibilities. CSA Parental Agreements are only used when a child is placed outside of the home in a treatment setting. A parental agreement template, included with the Interagency Foster Care Guidelines, delineates the responsibilities of both the parent and the local case management agency in the provision of services.

Resource Documents

For the "Final Interagency Guidelines on Foster Care Services for Specific Children in Need of Services Funded through the Comprehensive Services Act" go to Interagency Foster Care Guidelines and for its Frequently Asked Questions (FAQ) document, go to FAQ Interagency Guidelines

For the Eligibility Checklist document, go to Eligibility Determination Checklist and its FAQ at FAQ Eligibility Checklist

For the CSA Parental Agreement form, go to CSA Parental Agreement and its FAQ at FAQ Parental Agreements

For the DSS Non-Custodial Foster Care agreement, go to DSS Non-Custodial Agreement Form

For a Power Point presentation on the Guidelines dated October 2008 go to CSA Foster Care Guidelines final.ppt