

**A SNAPSHOT OF FEDERAL LAWS ESTABLISHING RIGHTS AND
OPPORTUNITIES FOR POOR YOUTH INVOLVED IN THE CHILD
WELFARE AND/OR JUVENILE JUSTICE SYSTEMS¹**

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¹ This document is intended to provide only a brief overview of some of the more important federal laws that apply to youth in the juvenile justice and child welfare systems. The laws outlined here are complex. A more comprehensive review of them and the case law interpreting them is beyond the scope of this document. In addition, a survey of state laws governing delinquency, dependency and status offender proceedings, rights established under state and federal constitutions and state confidentiality laws are beyond the scope of this “Snapshot.”

The Medicaid Act, 42 U.S.C. §§ 1396 et seq.

Medicaid is a program that provides public health insurance to children and families. It is a cooperative federal-state program through which states that elect to participate may recover federal funds for the medical treatment of specific categories of needy individuals. States may elect not to participate in the program, but if they “opt in,” they must abide by federal law and regulations.

Medicaid programs vary from state to state. But every state is required to submit a state plan conforming to the requirements of federal law to the Centers for Medicare and Medicaid Services (CMS), the federal agency responsible for implementing Medicaid. The state plans require CMS approval.

Under § 1396a(a)(8) of the Medicaid Act, services must be furnished with “reasonable promptness.” The statute does not specifically define “reasonable promptness,” but courts have interpreted this to be a mandatory provision, and that it is violated if individuals are placed on a waitlist for services or if a state does not have guidelines for the timely provision of services.

Under 42 U.S.C. § 1396a (a) (30) (A), the equal access provision of the Medicaid Act, states are required to provide care and services to Medicaid recipients at least to the extent that such care and services are available to the general population in the geographic area. The purpose of this provision is to prevent disparity between the availability of services to Medicaid patients and those who can pay.

The “Inmate Exception” to the Medicaid Act prohibits federal financial participation for care or services provided to an “inmate of a public institution.” *See* 42 U.S.C. § 1396d(a)(27)(A) and 42 C.F.R. §§ 441.33(a)(1), 435.1008(a)(1). But importantly, the inmate exception provision does not make inmates ineligible for Medicaid, or require that youth automatically lose their eligibility if they are on Medicaid when they go to jail; it merely prohibits federal reimbursement for services and care provided to inmates serving time in detention or prison. In fact, the Centers for Medicare and Medicaid Services (CMS) encourages states to suspend, instead of terminate, Medicaid benefits while a person is in a public institution so they will have timely access to services upon release to help provide continuity of care. *See* CMS letter dated May 25, 2004, to State Medicaid Directors, a copy of which is available from the author. In addition, this exception does not apply to youth on probation or parole, individuals on home release, or to youth who have been sentenced to a non-secure community placement but is awaiting placement in detention so federal financial participation is available for the services provided to these youth.

The National Health Law Project (www.healthlaw.org) provides excellent information and resources on the Medicaid Act.

Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Provisions of the Medicaid Act, 42 U.S.C. § 1396d (a)(4)(B).

The EPSDT provisions of the Medicaid Act require a state to provide children under the age of 21 “*necessary health care, diagnostic services, treatment, and other measures... to correct or ameliorate defects and physical and mental illnesses and conditions....*”

The EPSDT provisions are mandatory. States must provide all medically necessary services to children under the age of 21 even though they may choose not to provide certain Medicaid services to the adult population. The statute also requires states to provide outreach and information to eligible families about their entitlement to services. Periodic physical examinations are required to assess the physical and mental health needs of youth. States are mandated to provide treatment for the conditions identified during these mandated screenings.

The scope of services participating states are required to provide to Medicaid eligible youth under EPSDT is very broad in terms of the amount, duration and type of services, including dental, medical, hearing, vision and mental health services, as well as service coordination. Numerous federal district court cases have reiterated the mandatory nature and breadth of the scope of the EPSDT entitlement, regardless whether the state has a fee for service or managed care delivery system. Mandated services include medical or remedial services a competent medical provider specifically finds necessary for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level. 42 U.S.C. § 1396d(a)(13). Federal regulations require that necessary transportation services also be provided to access providers. 42 C.F.R. § 441.62 (2002).

Supplemental Security Income Program (SSI), 42 U.S.C. §§ 1381 et seq.

SSI is a federally funded and administered program that provides cash assistance to youth based on disability and financial need. In general, to be eligible for SSI benefits an individual must meet citizenship and residency requirements and disability and financial criteria. In most states, youth who qualify for SSI benefits are automatically eligible for Medicaid.

There are different disability standards for individuals over the age or 18 and those 18 or younger. In order for an individual who is under 18 years of age to meet the disability criteria, she must have a “medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. § 1382c(a)(3)(C)(i). Individuals 18 and older must demonstrate a disability severe enough to prevent the individual from engaging in “substantial gainful activity”

by working in a job that is available in the national economy. 42 U.S.C. § 1382c(a)(3)(A) and (B).

Incarcerated youth may not receive benefits during their period of imprisonment, but the Social Security Administration may suspend benefits during incarceration for up to two full calendar months. 42 U.S.C. § 1382(e)(1)(A); 20 C.F.R. 416.1325(b). Youth released before the end of the suspension period do not need to reapply in order to have their benefits reestablished upon release. 20 C.F.R. 416.1325(b). The Social Security Administration has established procedures enabling local SSA offices to provide support to public institutions in assisting individuals to apply for SSI benefits while still incarcerated. *See* SSA's Program Operations Manual System (POMS) at D123530.001.

The Council of State Governments' *Criminal Justice/Mental Health Consensus Project* (www.consensusproject.org), is a useful resource and helps local, state and federal policymakers provide better access to SSI benefits for youth with mental health needs upon release from jail.

Temporary Assistance for Needy Families (TANF), 42 U.S.C. §§ 603 et seq.

TANF provides assistance and work opportunities to needy families by granting states the federal funds and wide flexibility to develop and implement their own welfare programs. TANF was created by the Welfare Reform Law of 1996. TANF became effective July 1, 1997, and replaced what was then commonly known as welfare: Aid to Families with Dependent Children (AFDC) and the Job Opportunities and Basic Skills Training (JOBS) programs. More information about TANF is available at <http://www.acf.dhhs.gov/programs/ofa/> TANF regulations are found at: 45 C.F.R. 201 et seq.

Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1401 et seq.

The IDEA establishes the rights of disabled children to special education and related services necessary to ensure they are provided a free and appropriate education. The IDEA provides federal aid to state and local school agencies for some of the costs of special education services in exchange for the states' compliance with the requirements of the law.

The IDEA provides extensive and detailed procedural and substantive mandates intended to ensure that disabled children receive individualized education services. School districts are affirmatively required to find and evaluate children with disabilities. Youth who meet the IDEA's definition of disability are entitled to an "Individualized Education Program" ("IEP"), education in the least restrictive setting, and specialized instruction to meet their unique needs. The IDEA requires the assignment of a "surrogate" parent (who

is not an employee of the state or local educational agency or any other agency involved in the education or care of the child) to protect the rights of the disabled child whenever the parents of the child are not known or when the child is a ward of the state. 20 U.S.C. §§ 1415(b)(2); 1439(a)(5).

The IDEA generally applies to youth in non-secure and secure custody. A useful manual entitled: “*Special Education Advocacy Under the Individuals with Disabilities Education Act for Juveniles in the Juvenile Delinquency System,*” (Joseph B. Tulman & Joyce A. McGee eds., 1998) (updated with amendments made to the IDEA in 2004) is available at: www.law.edc.edu/programs/juvenile/pubs.html#Manual

Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 et seq.

Section 504 prohibits discrimination on the basis of disability by programs that receive federal financial assistance. Section 504 requires the provision of services and reasonable accommodations to youth who have a physical or mental impairment that substantially limits a “major life activity.” 34 C.F.R. § 104.3(j). The law applies to youth in institutions, provided the facility receives federal funds. In the education context, Section 504 requirements apply to a broader group of youth than those covered by the IDEA because of differences in the two laws definition of disability.

McKinney-Vento Homeless Education Act, 42 U.S.C. § 11434 et seq.

McKinney-Vento is a federal Act dealing with the education of children and youth experiencing homelessness in U.S. public schools. The regulations implementing the Act are found at 34 C.F.R. 200 et seq. It requires state educational agencies to ensure that homeless children have equal access to the same free, appropriate education as provided to other youth. The National Center for Homeless Education is a good resource for information about this law and state programs implemented under it: <http://www.serve.org/nche/>

Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131 et seq.

Title II of the ADA prohibits local and state governmental entities from excluding persons with disabilities from participation in or the benefits of services, programs, or activities, provided the exclusion is by reason of the disability. 42 U.S.C. § 12132. The requirements of this law apply to delinquent and dependent youth in the custody and care of the state. A disability under the ADA is defined as a person with a physical or mental impairment that substantially limits one or more of the major life activities.

One of the federal regulations promulgated to implement this law, the so-called “integration regulation,” requires a “public entity [to] administer ... programs ... in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”

28 C.F.R. § 35.130(d). The “reasonable-modifications regulation,” requires public entities to “make reasonable modifications” to avoid “discrimination on the basis of disability,” but does not require measures that would “fundamentally alter” the nature of the entity's programs. C.F.R. § 35.130(b)(7). In a landmark decision with implications for youth in the care of the state, the United States Supreme Court interpreted these regulations in a case involving mentally disabled adults confined in institutions instead of less restrictive community-based placements. *See Olmstead v. L.C.*, 527 U.S. 581(1999), The Court held in *Olmstead* that:

[U]nder Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.

527 U.S. at 607.

Adoption Assistance and Child Welfare Act (AACWA), 42 U.S.C. §§ 620 et seq. as amended by the Adoption and Safe Families Act (ASFA), 42 U.S.C. §§ 670-79.

The ASFA, signed into law in 1997, governs state child welfare practices and federal reimbursements for services under the Social Security Act. The Social Security Act (SSA) contains the primary source of federal funds available to states for child welfare, foster care, and adoption activities. Title IV-E of the SSA provides the largest single source of funding for eligible children in foster care. Title IV-E is available to fund foster care maintenance payments, including room and board, clothing, school supplies, insurance, daily supervision, travel for parental visitation, insurance and personal incidentals. 42 U.S.C. §§ 671(a)(1), 672, 674(a)(1), 675(4). Reimbursement to states for payments to parents adopting a special needs child from foster care is also available. 42 U.S.C. 42 U.S.C. §§ 671(a)(1), 673, 674(a)(2). Under Title IV-B, sub-parts I and II, states may be reimbursed for providing or purchasing a broad array of child welfare services, regardless of family income, including services to prevent abuse and neglect and delinquency, to protect homeless children, to provide family support and for adoption promotion and support.

States may be reimbursed for a percentage of their foster care and adoption assistance payments for services, provided state plans that conform to federal law requirements are submitted and approved by the federal government. 42 U.S.C. § 671(a). The ASFA conditions states continuing eligibility for funds under Title IV-E and IV-B on implementation of the requirements of the Act. Federal law requires states to develop a case plan for *all* youth in foster care that sets forth how the child's needs shall be met. ASFA emphasizes the importance of placement permanency and the safety and well-being of youth. It requires states to review at a permanency hearing at least every 6 months the cases of every foster youth held in care for more than a year.

The U.S. Department of Health & Human Services, Administration for Children and Families, *Child Welfare Policy Manual* conveys mandatory child welfare policies that have their basis in federal law and/or program regulations. See http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/index.jsp

Chaffee Foster Care Independence Act passed in 1999 provided additional block grant funding for independent living and transitional services for current and former foster youth. See 42 U.S.C. § 677. Funds under the Act may be used by states to assist youth leaving foster care – up to the age of 21 --to help them prepare for self-sufficiency and adulthood. The Act requires states to develop outcome measures to assess state performance on achieving the purposes of the Act. Outcomes include educational attainment, employment, avoidance of dependency, homelessness, non-marital childbirth, high-risk behaviors, and incarceration. The National Foster Care Coalition provides excellent resource material on the Chaffee Act in a Q & A format available at: <http://www.natl-fostercare.org/>

Kinship Care Support Services

States provide support for kinship care services using a variety of different federal program funds, including foster care and TANF. Useful information concerning kinship care support services organized by state is available from the AARP website at: <http://www.aarp.org/research/family/grandparenting/aresearch-import-488.html>

Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. §§ 5101-5106(a).

CAPTA provides federal funding to states in support of prevention, assessment, investigation, prosecution, and treatment activities related to child abuse and neglect. CAPTA identifies the federal role in supporting research, evaluation, technical assistance, and data collection activities; establishes the Office on Child Abuse and Neglect; and mandates the National Clearinghouse on Child Abuse and Neglect Information. CAPTA also sets forth a minimum definition of child abuse and neglect. It requires states to submit plans and annual reports to the Secretary of Health and Human Services. The Act requires that in cases involving child abuse or neglect a guardian ad litem must be appointed to represent the best interests of the child.

Workforce Investment Act (WIA), 29 U.S.C. § 2801 et seq.

The Workforce Investment Act establishes the primary federal job training and employment program for youth and adults. The program is available to low-income at-

risk youth, ages 14-21. The type of services available to youth include: tutoring, paid and unpaid work experience, occupational skills training, counseling, and supportive services including linkages to other community services and transportation. 20 C.F.R. § 664.460. For additional information about the WIA, including proposed changes in the federal workforce systems and proposed funding in President Bush's 2006 Budget, Center for Law and Social Policy at: www.clasp.org.

Juvenile Justice and Delinquency Prevention Act (JJDP), 42 U.S.C. § 5601 et seq.

Congress enacted the Juvenile Justice and Delinquency Prevention Act in 1974. The Office of Juvenile Justice and Delinquency (OJJDP) was founded as a result of the Act. OJJDP provides national leadership, coordination, and resources to prevent and respond to juvenile delinquency and victimization. *See* www.ojjdp.org. Federal funding reimbursement incentives are provided under the Act to states for compliance with substantive provisions of the law, including the requirements that youth housed in adult correctional facilities be separated from adults and that status offenders are not placed in secure detention unless under valid court order and under limited conditions.

Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. 1320d-2.

HIPAA and its implementing regulations, 45 C.F.R. §§160-164, establish the standards and requirements for the electronic sharing of certain health care information. HIPAA requires safeguards to protect privacy and to ensure the integrity of health records, information and data.

Federal Family Educational Rights and Privacy Act (FERPA), 28 U.S.C. § 1232g.

FERPA and its implementing regulations, 34 C.F.R. § 99, regulate the accessibility and disclosure of school records. It applies to public or private educational entities receiving federal funds from a program administered by the U.S. Department of Education. FERPA allows parents or guardians, and third parties given appropriate written consent, access to student records. There are several other categories of individuals who are entitled to access records without the consent of a parent, guardian or child (required only if over 18). *See* 34 C.F.R. § 99.31(a).