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| <b>To:</b>   | <b>Texas Judges Who Hear CPS Cases</b>  |
| <b>From:</b> | <b>The Honorable Robin Sage<br/>Jurist in Residence, Office of Court Administration</b> |
| <b>Date:</b> | <b>July 30, 2013</b>  |
| <b>RE:</b>   | <b>Federal Requirements Regarding Specificity in Court Orders</b>                       |

In the upcoming months, some judges will see new language in the court orders that are utilized by DFPS attorneys and some prosecutors around the state. The new language reflects the efforts of DFPS to include more specificity in court orders to comply with requirements of the federal Administration of Children and Families (ACF), which provides critical federal dollars to Texas to help pay for our foster care system. In FY 2012, DFPS applied for over \$227 million in federal Title IV-E reimbursements for foster care costs.

**Q: How is the federal ACF involved with the Texas foster care system?**

A: ACF administers the federal Title IV-E program, which provides financial reimbursement to states that comply with certain federal requirements. Every three years, ACF audits all states for Title IV-E compliance on a sample of 80 CPS cases. The audit includes a review of court orders to ensure certain findings are made and that those findings are based on the specifics of the case, or in other words, that the findings are made on a case-by-case basis.

**Q: What happens if a case doesn't meet all the Title IV-E requirements during the audit?**

A: The state has to pay back the Title IV-E reimbursement received on any case not meeting requirements. In addition, the state must submit a program improvement plan detailing how the deficiencies identified in the audit will be cured. If, during a subsequent IV-E audit, a certain number of cases fail for the same reason, demonstrating that the deficiency has not been cured, Texas will face a significant penalty against the entire amount of IV-E foster care reimbursement paid by ACF for the claim period. The penalty would be paid from the DFPS general revenue, which could in turn have a significant impact on other programs and services affecting the families on your dockets.

**Q: How do courts impact the audit?**

A: Federal regulations require that certain judicial findings be made in court orders before the state can be reimbursed with Title IV-E foster care funds for those cases. The required findings are:

- that it is contrary to the child's welfare to remain in the home, which must be made in the first court order sanctioning the removal of the child from the home;
- that the Department made reasonable efforts to prevent the removal, which is also typically included in the first court order sanctioning the removal, but which can also be made within the first 60 days of removal under federal law; and
- that the Department has made reasonable efforts to finalize the permanency plan in place for the child, which must be made in the court order following each permanency and placement review hearing

**Q: If we are already making these judicial findings in our court orders, why does DFPS want to change them?**

A: Most court orders in Texas contain the contrary to the welfare and reasonable efforts findings; the problem is a lack of specificity concerning these findings. The findings often do not mention the child by name nor do they specify the factual basis for the finding, which exposes the case to a violation of the “case-by-case” requirement. Court orders that specify the factual documents or other evidence the court reviewed to form the basis of the reasonable efforts findings assist in showing that the findings were made on a case-by-case basis. In addition, court orders reviewed in the 2012 audit that contained check boxes or other pre-printed optional findings were identified as routinely failing to demonstrate an individualized, case-by-case determination by the court. ACF encourages that court orders include information about the child’s current circumstances, such as placement type, permanency goal, and grade enrolled in school.

**Q: What should I do to make my jurisdiction’s court orders more specific?**

A: If DFPS is represented by a regional attorney, it is likely the orders are drafted through HotDocs, which is being revised for a September 2013 rollout to improve compliance with Title IV-E requirements regarding specificity as well as other state law changes from the 83<sup>rd</sup> Legislative Session. DFPS makes the HotDocs program available to all local prosecutors who wish to use it, and many do. For courts that do not use HotDocs, the court should ensure that:

- Removal orders contain the following language: “Having reviewed the Department’s pleadings and the sworn affidavit attached thereto, as well as the evidence presented to this court at the hearing conducted on [DATE OF HEARING] the court finds that it is contrary to the welfare of [SPECIFY EACH CHILD’S NAME FOR WHOM THIS FINDING IS MADE] to remain in the home. The court further finds that reasonable efforts were made to prevent the removal of [SPECIFY EACH CHILD’S NAME FOR WHOM THIS FINDING IS MADE].”
- For permanency and placement review orders, include the following language: “Having reviewed the court report filed by the Department, as well as other evidence presented to this court at the hearing conducted on [DATE OF HEARING], the court finds that the Department has made reasonable efforts to finalize the permanency plan in effect for [SPECIFY EACH CHILD’S NAME FOR WHOM THIS FINDING IS MADE].”

**Q: What else can I do to make sure court orders from my jurisdiction will pass the ACF audit?**

- Avoid the use of orders with check boxes, circles, and blanks to be filled in, if possible. If you use this type of order, ensure the correct box is checked, the correct phrase is circled, and the blanks are filled in with the correct information, including that something is not applicable by using “N/A” or marking through the boxes or blanks.
- State the relationship of any adult referenced in a court order to each child who is specified. For example, “John Doe, father of Janie Doe.”
- Ensure that the style of each case is child-specific – do not use et al. in the style of the case.
- Include the date on which the hearing was held in all court orders.

**Q: Who can I contact if I have questions?**

A: Please contact Beth Page, Director of Program Litigation, Department of Family and Protective Services at 512/438-2079 or [johnnie.page@dfps.state.tx.us](mailto:johnnie.page@dfps.state.tx.us).