



Accessing IV-E Reimbursement for Supervised Independent Living Homes

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This proposal includes recommendations on how the State of Ohio can draw down federal reimbursement dollars through the Title IV-E program by formally approving supervised independent living homes as placement settings for Ohio foster youth. The supervised independent living home is the only foster care placement setting that the State of Ohio does not issue a formal license, certificate, or similar approval status. The absence of this formality makes Ohio ineligible to draw down IV-E reimbursement to offset the cost of placements of foster children in this setting.

The recommendations build off of existing public policy and practice and do not require increased state spending. Instead, additional dollars can be sought from the federal government to support the care of Ohio children served in this setting. County public children service agencies (PCSA) have placed Ohio foster youth in supervised independent living homes for decades and at least ten non-profit Ohio agencies currently operate supervised independent living home programs.

I. Consultation and Research

During 2009 and 2010, OACCA consulted with its Independent Living Advisory Committee, the Ohio Department of Job and Family Services (ODJFS), the Public Children Services Association of Ohio (PCSAO), the Ohio Independent Living Association, and several provider agencies to determine how the State of Ohio can draw down federal reimbursement dollars to support the care of foster youth in supervised independent living homes. We have also researched:

- Federal laws, rules, and guidance on operating the Title IV-E foster care program;
- Ohio laws and regulations, and Ohio's Title IV-E plan;
- Former Ohio Department of Human Services guidelines;
- Laws and regulations from states with IV-E approved supervised independent living homes; and
- Practice standards from PCSAO and the Child Welfare League of America (CWLA).

II. Legal Authority

Federal law and regulations permit states to recognize supervised independent living homes as IV-E reimbursable placement settings for foster youth. At least four states -- New York, California, Minnesota, and Iowa -- draw down IV-E dollars to fund the care of youth in this setting. Ohio can be added to this list and maximize federal financial opportunities by taking the necessary steps, as outlined in section V. Please view the appendix for more information about authorizing statutes.

III. Benefits to the Public

Currently, funding for supervised independent living home placements occur through county general revenue or levy funds, and up to 30% of Ohio's federal Chafee allocation may be used to support young adults ages 18-21 who reside in supervised independent living homes. Drawing down new IV-E dollars for these services (which are already being provided) is a win-win benefit for the State of Ohio. The state would realize more federal dollars while local dollars would be freed to provide other services to foster children.

It is also important for our state to develop a formal approval process for this setting because the federal government has recently expanded use of IV-E for emancipated foster youth up to age 21. Under the Fostering Connections to Success Act and Increasing Adoptions Act, states may choose to extend its IV-E program to serve foster children through age 21. The law specifically authorizes use of IV-E for youth 18 and older who reside in supervised "independent living" settings, of which the federal government defines very broadly. Therefore, Ohio could create a new form of continuum of care by approving this placement setting to serve the *same* youth pre and post-emancipation.

IV. Existing State Regulations

Existing Administrative Code rules include requirements and standards for independent living services and supervised independent living homes.

5101:2-42-19 Requirements for the provision of independent living services to youth in custody.

- These regulations include the independent living service requirements for Ohio foster youth. The rule lists necessary services that will prepare youth to live independently, as well as guidelines for the development of a youth's independent living emancipation plan. The rule also lists the information that PCSAs must enter into the Statewide Automated Child Welfare Information System.

5101:2-42-19.1 Requirements for independent living arrangements for independent living youth in custody.

- These regulations include requirements for foster youth served in supervised apartment programs (referred to as independent living arrangements). The regulations list ten physical plant standards that must be met, including such things as the presence of operable smoke alarms, heating and cooling systems, and emergency procedures.

5101:2-42-19.2 Requirements for provision of independent living services to young adults who have emancipated.

- These regulations include requirements for independent living services provided to foster youth who have already emancipated from foster care.

V. Recommended Framework for Approving Supervised Independent Living Homes

- ODJFS should promulgate rules to:
 - Recognize supervised independent living homes as IV-E reimbursable settings (OAC 5101:2-47-16 (A)). (The Ohio Title IV-E Plan may not need to be amended because supervised independent living home settings can be classified under “child care institution” or “foster family home” (Section 2, Page 6 of the Plan).)
 - Permit private agencies that are certified to operate independent living programs (pursuant to OAC 5101:2-5-03) to recommend individual supervised independent living home settings for state certification. This will parallel the foster home certification process.
 - Require private agencies to maintain records of each individual supervised independent living home setting that the agency has approved. These records should be made reasonably accessible to ODJFS.
- Maintain the ODJFS agency certification category “To operate or provide independent living arrangements” (OAC 5101:2-5-03). Consider renaming “independent living arrangements” to “supervised independent living home settings” to prevent potential misinterpretation by the U.S. Department of Health and Human Services (HHS).
- Each individual supervised independent living home setting does not need to be licensed nor certified by the state. Instead, the agency that operates the program does, which is the current practice.
- ODJFS should maintain its authority to inspect individual settings under its independent living setting standards regulations (OAC 5101:2-42-19.1).

VI. Resources to Consider If Promulgating New Regulations

ODHS Guidelines and Practice Standards for Independent Living

- The former Ohio Department of Human Services maintained “Guidelines and Practice Standards for Independent Living”. The guidelines recognize that there are two distinct types of supervised transitional living placement settings: 1) supervised staff apartments in which program staff are present 24/7 and, 2) individual apartments or boarding homes, in which staff are not present 24/7; these programs are often referred to as semi-supervised scattered-site programs.

Provisions from the ODJFS Safety Audit Form

- Provisions of the JFS 01348 Safety Audit form that are not included in 5101:2-42-19.1.

PCSAO and CWLA Standards for Independent Living Services

- These resources focus on independent living services, not physical plant requirements of living settings.

California Regulations - Transitional Housing Placement Program for Current Foster/Probation (THPP)

- Services foster youth ages 16-18.
- Counties choose to participate in the program.
- Participants may live alone, with departmental approval, or with roommates in apartments and single-family dwellings with regular support provided by THPP agency staff, county social workers and ILP coordinators.

New York Regulations - Agency Boarding Home Program

- The number of adults employed in the home must be sufficient to provide adequate supervision for each child residing in the home and must be proportional to the total number of such children.
 - At least two adults must be responsible for the care of the children in the home and at least one adult must be present in the home at all times when a child is in the home.
- The agency boarding home shall be in an appropriate neighborhood and so located that it is readily accessible to schools, recreational facilities, and churches.
- Buildings used in whole or in part as an agency boarding home must comply with all applicable laws, ordinances, rules, regulations and codes relating to buildings, fire protection, health and safety.
- An agency boarding home must be free from all conditions which constitute a hazard to the life, health or safety of any person.

New York Regulations – Supervised Independent Living Program

- Supervised independent living program means one or more of a type of agency operated boarding home operated and certified by an authorized agency to provide a transitional experience for older youth.
- Supervised independent living unit means a home or apartment by an authorized agency for the care of up to four youth including their children. Each supervised independent living unit must be located in the community separate from any of the authorized agency's other congregate dwellings.
- Adequate staffing must be maintained to provide services, visits, and supervision. The supervision of youth participating in a supervised independent living program must be performed by designated staff member(s) of the authorized agency who are qualified to perform such function; staff member(s) so designated must visit and consult with each youth at the supervised independent living unit at least twice per week. At least one visit per week must be held outside of standard business hours. An increased number of visits are required, when necessary, to address the individual health and safety needs of the residents of the supervised independent living unit. Visits conducted pursuant to this subdivision may satisfy the casework contact requirements.
- A supervised independent living unit must be kept in clean and sanitary condition and in good repair, and must provide for the reasonable comfort and well being of the youth.
- A supervised independent living unit must be protected by a fire detection system.

Minnesota Regulations – Transitional Services Certification

- A transitional services program provides congregate, scattered site, or cooperative housing for residents considered to be targeted youth.
- Serves residents 16 to 21 years old.
- Transitional services program services include housing, independent living skills training, and related supportive services.
- A resident may be housed in a community setting that includes individual or shared apartments, rental rooms, or other rental housing or in a congregate living program.
- Programs must provide outcomes to the state.
- When a client's place of residence is provided by the license holder as part of the independent living assistance program, the place of residence is not subject to separate licensure.

Appendix

Federal Law

[Section 472 \(b\) and \(c\) of the Social Security Act](#) states that foster care maintenance payments made through IV-E may only be made on behalf of IV-E eligible children who are placed in a foster home or in a “child care institution”. A “child care institution” is defined as

“a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing.”

This federal law does not prohibit use of IV-E in supervised independent living homes.

Federal Rule

Section [45 CFR 1355.20](#) of the Code of Federal Regulations includes definitions of key terms that are relevant for understanding the parameters of IV-E in substitute care settings. The definition of “foster care” is (italics added):

“24-hour substitute care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, *but is not limited to*, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, *child care institutions*, and preadoptive homes.”

This definition shows that states have flexibility of choosing which substitute care settings may be considered “foster care” for IV-E purposes. However, the definition also states that the care must be “24-hours”. What constitutes 24-hour care is not defined.

While the rule does not exclude supervised apartment-like settings from being considered for IV-E purposes, it does add a condition that the settings consist of “24-hour” care. This may be interpreted by HHS as excluding scattered-site apartments unless evidence can justify that such programs genuinely offer 24-hour care to the child in placement. This should not, however, be interpreted as excluding supervised apartment-like settings where a staff member of a public or private agency is on-site 24 hours a day.

Federal Child Welfare Policy Manual

In [Section 3, QA #1 of the Federal Child Welfare Policy Manual](#), HHS answers whether or not IV-E precludes a state from passing on to the child title IV-E funds for his use for his maintenance in an independent living program. The response from HHS states that:

“Title IV-E precludes payments made directly to the child or turned over to him by another agency for the purpose of meeting independent living costs.”

This statement means that one cannot provide IV-E dollars directly to a youth (a monthly allowance, for example). Instead, the public or private agency must administer the payment to provide “maintenance” to the child in the setting.

Later the Manual states:

“Title IV-E does not include ‘independent living’ in these definitions [in federal rule and law], and it is not considered foster care within the meaning of the Act.”

This statement means that independent living is not a substitute care setting that may be considered under the federal rule definition of foster care. Providing IV-E funds to a foster youth to cover the costs of him or her living independently is prohibited. Instead, costs must be for a foster care placement setting, such as a foster home or a group home.

State Law

[Section 5101.141 of the Ohio Revised Code](#) specifies that authority of ODJFS to create rules to implement the IV-E program in Ohio.

State Rule

[Section 5101:2-47-16 of the Ohio Administrative Code](#) specifies which placement settings that Ohio recognizes as being IV-E reimbursable. These settings include: foster home, relative foster home, group home, maternity home, residential center, residential parenting facility, or “purchased foster care” from a public or private agency. The settings do not explicitly include supervised apartment-like settings, but could be amended by ODJFS to do so.

State IV-E Plan

[The Title IV-E State Plan for Ohio](#) was approved by HHS in 2001. The plan mimics much of federal law, in stating that IV-E may be used in foster homes and child care institutions.