



Iowa Department of Human Services

Terry E. Branstad
Governor

Kim Reynolds
Lt. Governor

Charles M. Palmer
Director

January 5, 2016

Michael Marshall
Secretary of Senate
State Capitol Building
LOCAL

Carmine Boal
Chief Clerk of the House
State Capitol Building
LOCAL

Dear Ms. Boal and Mr. Marshall:

Enclosed please find copies of reports to the General Assembly relative to the Child Welfare Advisory Committee Report.

This report was prepared pursuant to the directive contained in SF 505 of the 2015 legislative session.

Please feel free to contact me if you need additional information.

Sincerely,

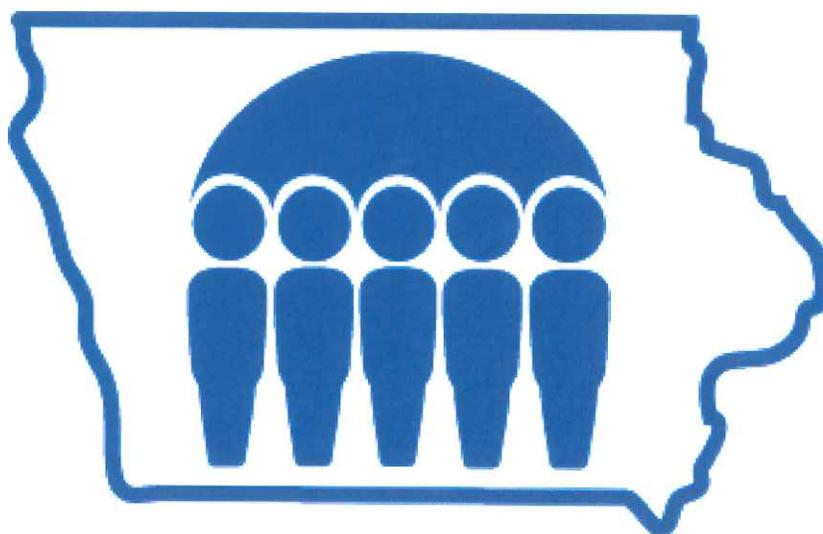
Paige M. Thorson
Policy Advisor

PT/mm

Enclosure

cc: Terry E. Branstad, Governor

Iowa Department of Human Services



Child Welfare Advisory Committee's Report

January 2016

Executive Summary:

The Child Welfare Advisory Committee (CWAC) was charged to study procedures in the Department of Human Services (DHS) for receiving complaints from families involved in guardianship, placement, and custody proceedings; and the specificity and clarity of court orders issued in foster care placements pursuant to the State of Iowa Primary Review of Tit. IV-E Foster Care Eligibility Report of Findings for October 1, 2012, through March 31, 2013. The conclusion and recommendations can be found within the report.

Introduction:

Senate File 505 passed the Iowa Senate and the Iowa House of Representatives on June 3, 2015. The bill (subject to a line item veto unrelated to this report) was signed into law by Governor Terry E. Branstad on July 2, 2015. Section 100 of that bill, included the following language:

Sec. 100. STUDY – CHILD WELFARE ADVISORY COMMITTEE.

The child welfare advisory committee of the council on human services established pursuant to section 217.3A shall study procedures in the department of human services for receiving complaints from families involved in guardianship, placement, and custody proceedings; and the specificity and clarity of court orders issued in foster care placements pursuant to the State of Iowa Primary Review of Tit. IV-E Foster Care Eligibility Report of Findings for October 1, 2012, through March 31, 2013. The committee shall submit a report with findings and recommendations to the governor and general assembly on or before December 15, 2015.

Overview:

The Child Welfare Advisory Committee appointed a subcommittee (composed of the following members: Jerry Foxhoven, Gail Barber, George Belitsos, and Jacob Carmi) to investigate and study the procedures within the Iowa Department of Human Services for receiving complaints from families involved in guardianship, placement, and custody proceedings and to review the clarity of court orders. The Child Welfare Advisory Committee has heard on a number of occasions at its regular meetings from representatives of the “Family Advocate”/“Iowa Family Rights” group, and has given members of that group opportunities to be heard. The committee is also aware that other groups and individuals (including the Director of the Iowa Department of Human Services) have had meetings with representatives of that group to answer questions and to provide opportunities for collaboration with them to resolve issues. The subcommittee also reviewed a written listing of issues by the leader of the Family Advocate group in proceeding with its investigation and study.

The subcommittee completed its investigation and study and drafted a report to the Iowa Governor and to the Iowa General Assembly pursuant to Section 100, S.F. 505 for review by the Iowa Child Welfare Advisory Committee (consisting of 14 full members and 6 *Ex Officio* members). The Child Welfare Advisory Committee completed this report and approved the same. This report is hereby submitted to the Iowa Legislature and Governor Branstad by the Iowa Child Welfare Advisory Committee in compliance with Section 100 of Senate File 505.

DISCUSSION

There are three primary sources for receiving complaints from families involved in guardianship, placement, and custody proceedings: (1) the Iowa Department of Human Services (hereinafter referred to as "DHS"); (2) the Iowa Judicial Branch (hereinafter referred to as "the Courts"); and (3) the Office of Ombudsman (hereinafter referred to as "the Ombudsman"). While Section 100 of Senate File 505 only required the Child Welfare Advisory Committee to review the procedures within DHS to receive complaints, the Committee determined that it was necessary to review all three sources for the review of such complaints because all three of those sources interrelate to provide a comprehensive review procedure for complaints. The three sources for review of complaints were studied and investigated separately and will be reviewed individually.

I. DHS:

The Iowa Department of Human Services has multiple entry points for identifying and resolving issues from families involved in guardianship, placement, and custody proceedings. DHS uses a very informal procedure in addressing complaints directly with the public, as well as more formal systems for identifying and resolving issues of concern. Basically, the informal procedure involves "working up the chain of command" when a citizen lodges a complaint. The complaint is submitted to the caseworker's supervisor, and, if not resolved, continues up the chain of command to administration. Also, when organized groups have similar complaints, meetings with the representatives at the highest level of DHS are arranged so that the complaints can be heard and addressed. For instance, for the past 2 years, the Director of DHS (Charles Palmer) has met with the "Family Advocate"/"Iowa Family Rights" group on at least a quarterly basis to review individual complaints/cases and to attempt to bring resolution to those complaints. DHS has also responded to numerous "Requests for Information" from that group.

DHS also has a number of more formal procedures to review, identify, evaluate, and resolve issues in its child welfare system. These formal procedures include random court review of cases (as discussed more in depth under the "Courts" section of this report); reviews of cases under the federal Child and Family Service Review (CFSR); and supervisory and group reviews of cases. Also, as will be noted later, DHS has implemented a web-based complaint system to allow the public easy access to filing a

complaint along with a system for logging of responses to complaints received under that web-based system.

DHS also works closely with the Ombudsman to resolve issues that are identified by the ombudsman relating to complaints from families involved in guardianship, placement, and custody proceedings. For instance, as noted in the Ombudsman section of this report, the Ombudsman identified an issue concerning notification of relatives whenever a child is removed from a home. As a result of the identification of this issue by the Ombudsman, forms and procedures have been implemented in DHS to substantially improve notification of relatives whenever a child is removed. As another example, the Ombudsman notified DHS that it had concerns that placement preferences for relatives was not consistent across the state. As a result, DHS worked with the Ombudsman to improve and enhance policies for placement preferences for relatives of a child who is placed in an out-of-home setting.

DHS has also met with representatives of parent and family groups to resolve complaints by implementing new procedures. For instance, as a result of its meetings with the "Family Advocate"/"Iowa Family Rights" group, DHS implemented a web-based system for the public to use to file complaints with DHS. This new web-based system was implemented in April of 2015. Since that time, there were a total of 1,031 complaints filed through the web-based complaint system, 10 (.97%) of which related to child welfare cases, 17 (1.65%) of which related to foster care, and 5 (.48%) related to Child and Family Services. This system also involves logging of responses so that the response rate can be documented and to minimize the number of cases where there is a question as to whether or not any response was made.

II. The Courts:

The most frequently-voiced complaints by groups such as the Family Advocate group revolve around the allegedly "improper" removal of children from their families, often resulting in a termination of parental rights (TPR). Both federal and state laws require that "reasonable efforts" be made to maintain the family or, if removal is necessary, to reunite the family. Iowa law requires that the trial court inquire about what reasonable efforts have been made to either prevent removal or to return the child to the parents at virtually every hearing occurring when a child has been removed from the custody of the parents. See, *Iowa Code* §§ 232.95(2)(6), 232.96(10)(a), 232.102(5)(b), and 232.102(10)(a). Those laws also require a judge to make a finding at every hearing where the child has been removed concerning whether or not DHS has made such reasonable efforts.

While it appears that in the vast majority of cases trial courts have found that the state did make reasonable efforts, there have been some cases where the court has found that such reasonable efforts have not been made. Consequently, it is clear that the trial courts are not a "rubber stamp" for DHS concerning the making of reasonable efforts. Likewise, the existence of "reasonable efforts" is a frequent issue in appeals in juvenile cases. Again, while it appears that in the vast majority of cases the appellate courts have found that the state did make reasonable efforts, there have been some cases

where the appellate courts have found that such reasonable efforts have not been made. Consequently, it is clear that the appellate courts are not a “rubber stamp” for DHS concerning the making of reasonable efforts or for the trial courts in finding that DHS has made reasonable efforts to reunite the family.

From 2001 to the present, Iowa Court Improvement (now known as Iowa Children’s Justice) staff have provided random court observation and court file reviews. Once a review in a county is complete, a discussion is held with the judge that serves on the juvenile bench regarding the results of the file review and court observation, and offer suggestions on how to improve the court orders to assure clarity and meeting the federal criteria of timely permanency. In addition, judges are required to attend annual training on juvenile and child welfare issues. During these trainings, Iowa Children’s Justice staff present results of court observations and file reviews as well as IV-E issues that might arise and provide consultation on ways to improve the clarity of court orders. Children’s Justice has developed a number of tools to help judges be aware of the federal requirements for each hearing.

Section 100 of Senate File 505 specifically directed the Child Welfare Advisory Committee to review the results of the federal IV-E audits that had been conducted through 2013. All states that receive IV-E funds must be audited, approximately every 3 years. In 2001, 2007, 2010, and 2013, the State of Iowa participated in IV-E audits. This federal audit is conducted under specific regulation and processes within the federal code. The federal program manager or designee, along with several key staff and contract staff, work in pairs with in-state reviewers to complete the review. The in-state reviewers are selected based on their experience in child welfare or juvenile delinquency cases, then provided training on the review process. In each of the reviews, at least one judge and the Director of the Iowa Court Improvement Project (Children’s Justice) served on the in-state review team along with DHS central office, field staff and contract providers.

The federal Review Manager determines the number of random out-of-home cases that are to be reviewed. These could include child in need of assistance or juvenile delinquency cases, as long as the child or youth was in an out-of-home placement at some point during the life of the case, and was still an open case with DHS or Juvenile Court Services (JCS) during the period under review. DHS sends a list of case numbers that meet the criteria. A computer generated randomized list of case numbers are provided to DHS by the federal manager. Those DHS case files from across the state are brought to Des Moines for the review. One week is set aside for a team of between 10 and 12 in-state and federal reviewers. Each federal or contract staff is paired with a state reviewer who each look over the case to assure the case meets all the criteria in

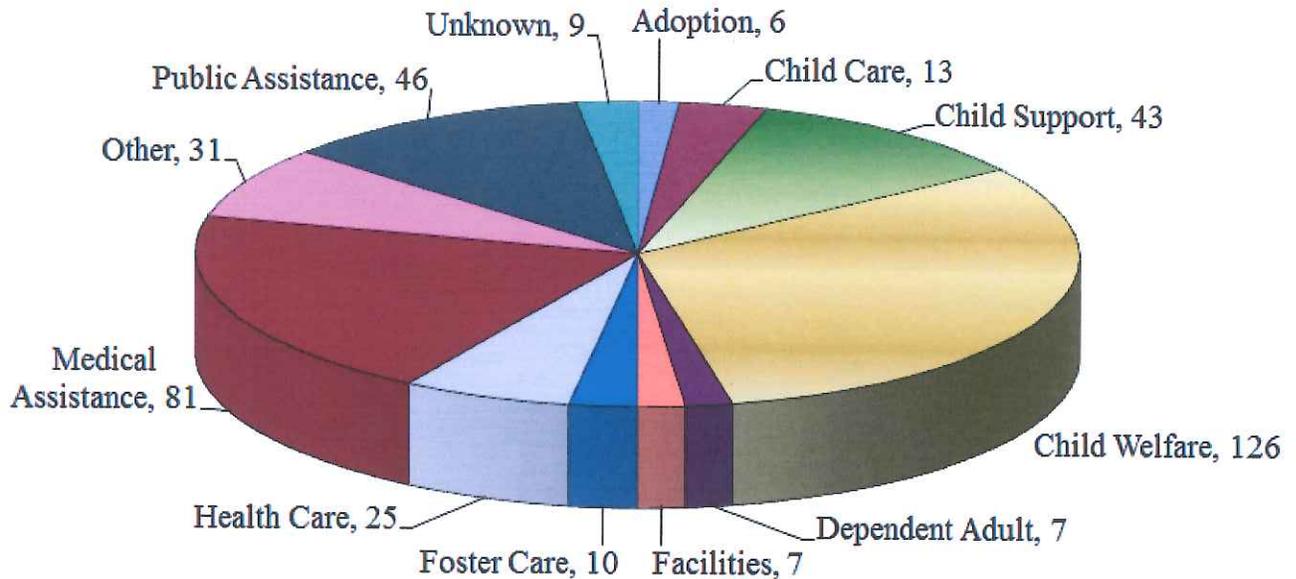
the code. The cases are reviewed by 3 to 5 different members, starting with each member of the team, a quality assurance federal staff, the review Manager, and finally the federal IV-E manager or designee in Washington, D.C. A final determination is made whether the case file meets or does not meet the criteria. A final report is sent to the Director of Human Services with the results of the review along with recommendations for improvement.

In 2001 and 2007, 100 cases were audited, 80 were actually reviewed and 20 were available in case of a need for substitute. Each case file was reviewed to verify title IV-E eligibility. Court orders are reviewed for inclusion of critical findings. The foster care provider's file was examined to ensure that the foster family home or childcare institution where the child was placed was licensed and approved and that safety requirements were appropriately documented. Income of the family is verified to assure their eligibility for the case to receive federal IV-E funds. Payments made on behalf of each child also were reviewed to verify that the expenditures were allowable under title IV-E and to identify underpayments that were eligible for claiming. In 2001, with new federal regulations in place, the federal IV E Program managers initiated the first audits in 16 years for all states receiving IV E funds. Iowa had 22 cases with errors, across all criteria. A program improvement plan was developed and put into place. Prior to 2007, the plan had been thoroughly implemented. This resulted in a far better result in 2007, with only 7 errors. In 2010, 100 cases again were randomly selected for review, with 80 actually used. In 2013, 110 cases were randomly selected for review. In the last two reviews (2010 and 2013), no errors of any kind were identified. Although the reports always include recommendations, no improvement plan is developed when a state has passed the audit.

Over the last 12 years, DHS has continued to develop and improve the IV-E quality improvement process. Currently, the DHS IV-E Program Manager works out of Central Office, while most IV-E staff are based in the field offices. The quality assurance staff review court orders brought to them by DHS staff, supervisors or management to assure that the "contrary to the welfare" finding and the reasonable efforts or lack of reasonable efforts finding is included in all the required court orders. All court orders are reviewed by a supervisor or quality assurance staff to assure that no claims are made on ineligible cases. When an order needs clarity or does not meet IV-E criteria, DHS staff provide feedback to the judge regarding the order. Future IV-E reviews will continue. The current period under review covers the period from 10/1/15 through 3/31/16 and the next federal onsite IV-E audit is scheduled to take place from August 1-5 of 2016.

III. The Ombudsman:

The Ombudsman handles a significant number of complaints against DHS. In her latest Annual Report (2014), Iowa Ombudsman Ruth Cooperrider reported that her office received a total of 372 complaints against DHS during 2014, amounting to over 9% of all cases opened by the Ombudsman that year. (These numbers were fairly consistent with the numbers from the previous year, where the Ombudsman opened a total of 376 cases against DHS, amounting to 9.49% of all cases opened by the Ombudsman that year.) Her 2014 Annual Report provided the following breakdown of cases opened involving DHS:



The authority and procedures for investigating complaints by the Ombudsman is set forth at Iowa Code, § 2C.12:

2C.12 Complaints investigated.

1. The ombudsman may receive a complaint from any source concerning an administrative action. The ombudsman shall conduct a suitable investigation into the administrative actions complained of unless the ombudsman finds substantiating facts that:
 - a. The complainant has available another remedy or channel of complaint which the complainant could reasonably be expected to use.
 - b. The grievance pertains to a matter outside the ombudsman's power.
 - c. The complainant has no substantive or procedural interest which is directly affected by the matter complained about.
 - d. The complaint is trivial, frivolous, vexatious, or not made in good faith.
 - e. Other complaints are more worthy of attention.
 - f. The ombudsman's resources are insufficient for adequate investigation.

- g. The complaint has been delayed too long to justify present examination of its merit.
2. The ombudsman may decline to investigate a complaint, but shall not be prohibited from inquiring into the matter complained about or into related problems at some future time.

Normally, when the Ombudsman declines to review a child welfare complaint (such as one concerning placement or custody of a child), it is when the issue has been decided or about to be decided by the courts. Even then, the Ombudsman tries to inform the complainant of ways to be heard (e.g., if person is a relative, talk to DHS caseworker as early as possible, intervene in the court proceeding, and share information with GAL for child). If the Ombudsman identifies an issue or concern regarding how DHS initially handled the issue before it got to court (such as a failure to provide the required notice to a relative), they do investigate the situation.

The Ombudsman has identified several issues with DHS that they believe could be improved upon: 1. caseworkers' understanding of what Iowa law requires as to notice to relatives; and 2. whether relatives are given preference for placement. As to relative preference for placement, the Ombudsman is concerned about what criteria are considered, how supervisor oversight (when out-of-home placements are made) and reviews (e.g., when a relative complains) are used to ensure appropriate and consistent application of requirements. The Ombudsman recommends that these types of problems need to be identified and corrected early in the proceedings.

Conclusion:

The Child Welfare Advisory Committee makes the following FINDINGS relative to the procedures for receiving complaints from families involved in guardianship, placement, and custody proceedings as well as the specificity and clarity of court orders issued in foster care placements:

- There are three (3) sources for receiving complaints from families involved in guardianship, placement, and custody proceedings: The Iowa Department of Human Services (DHS), the Iowa Judicial Branch (Courts), and the Office of Ombudsman (Ombudsman). These three sources are located in all three branches of government (DHS is in the Executive Branch, the Courts are in the Judicial Branch, and the Ombudsman is in the Legislative Branch). While these three sources are totally independent of each other, as shown in the discussion above, they frequently work in tandem to review child welfare complaints. The three sources also vary in terms of their formality. The least formal system for response to direct complaints by citizens has been conducted by DHS. DHS responds directly to citizens who have voiced a complaint by addressing the

person making the complaint by way of informal meetings and reviews by supervisors, managers and even by the Director himself. DHS has recently implemented a more formal system for web-based lodging of complaints. However, DHS also has more formal procedures to review, identify, evaluate, and resolve issues in its child welfare system. The Courts have a very formal review procedure and follow strict rules of court in both the trial and appellate courts. The Ombudsman operates in a mix of formal and informal procedures. When the Ombudsman formally accepts a case for investigation, it uses formal procedures. When the Ombudsman declines a formal investigation, it uses a very informal procedure to advise and assist the complainant in protecting his/her rights.

- DHS has worked closely with the Ombudsman's office to deal with issues identified by the Ombudsman and, in coordination with the Ombudsman, to clarify and enhance policies to effectuate improvements. (An example is the improved polices for notification of relatives when a child is removed.)
- DHS has also worked closely with different constituent groups to provide information to those groups, to identify complaints and to implement improvement in an attempt to resolve those complaints for future cases. (An example is the implementation of a web-based complaint system.)
- DHS has also worked closely with the courts to ensure that court orders are specific and clear in order to meet the findings and recommendations of the federal IV-E audits. Approximately every three (3) years, a federal IV-E audit is conducted to determine whether or not orders are clear and specific relative to findings that any removal or continuation of out-of-home placement is "in the best interest of the child" and whether or not the state has made "reasonable efforts" to both prevent removal of a child in the first place and, once removal has occurred, to return the child home. In 2001, the audit showed a substantial number of errors were found, resulting in a program improvement plan to improve the specificity and clarity of the court orders. With the program improvement plan in operation, in 2007, the number of errors was reduced by 2/3's. In the past two federal IV-E audits (2010 and 2013), no errors were found, meaning that the program improvement plans have worked in securing virtually uniform specificity and clarity in the court orders.

Recommendations:

The Child Welfare Advisory Committee makes the following RECOMMENDATIONS pursuant to Section 100, S.F. 505:

- The Iowa Department of Human Services should adopt a simple, formal procedure to address complaints directly made by families involved in guardianship, placement, and custody proceedings and set forth those

procedures in a pamphlet for use by the public. DHS has already implemented a web-based system for the public to use to lodge a complaint. By developing a simplified policy for resolution of these complaints and setting them forth in pamphlet form, individuals with a complaint will more clearly know the procedure they can expect to be used for their complaint. Likewise, DHS officials will be able to close the complaint once all of the policies established have been exhausted. Logs should be kept to verify that the process has been followed.

Representatives of the Iowa Department of Human Services should meet with representatives of the Office of Ombudsman on at least a semi-annual basis to identify common complaints from families involved in guardianship, placement, and custody proceedings received by the Office of the Ombudsman and to develop responsive and corrective actions that can be implemented to prevent similar issues from occurring in the future.