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# INDEPENDENT LIVING PROGRAMS FOR FOSTER CHILDREN AND FORMER FOSTER CHILDREN

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## INTRODUCTION

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To fully understand why the Independent Living programs were created, and ensure that they are implemented to best fulfill their purpose, it is necessary to think about how children are normally raised by their own families. Parents are responsible for ensuring their children are trained in the family's values and receive discipline to inculcate those values. Parents also help with their children's formal education. We don't often think about the day-to-day, common-sense information that parents also impart to their children. And until the "Road to Independence Act" was passed in Florida, children's advocates did not focus much, if at all, on ensuring that foster children somehow learned this day-to-day information. Clearly, ensuring that foster children receive an appropriate formal education and health care services, and that they live in an appropriate foster home, can itself be a full-time endeavor.

The statistics, however, indicate just how important it is that foster children also learn all those things that parents typically impart to their children on an informal, daily basis. These things include: budgeting and money management, including how to write a check, and how using credit cards can increase the cost of purchases; menu planning, shopping and cooking; completing forms and applications; knowledge about paying taxes and timely filing tax returns; dressing appropriately for job interviews; and on and on. Those children fortunate enough to live in a family foster home, and to be stable in that foster home, can learn these things. But foster children who are moved frequently, or who live in group homes where these tasks are not modeled, simply do not learn these things. And when these foster children graduate from the system at age 18, they usually lose the adult supports they had; they are frequently unable to successfully perform the activities of adult daily living. Past studies have shown that approximately 50% of adults who aged out of the foster care system experienced homelessness and/or joblessness, were welfare recipients, or engaged in criminal activities for which they were imprisoned. This painted a grim portrait of life after foster care.

In 1999, Congress passed the John H. Chafee Foster Care Independence Act. (42 USCA § 677; Pub. L. 106-169.) The purposes of the Act, as amended in 2002, are:

- to identify children who are likely to remain in foster care until 18 years of age and to help these children make the transition to self-sufficiency by providing services such as assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention);
- to help children who are likely to remain in foster care until 18 years of age receive the education, training, and services necessary to obtain employment;
- to help children who are likely to remain in foster care until 18 years of age prepare for and enter postsecondary training and education institutions;
- to provide personal and emotional support to children aging out of foster care, through mentors and the promotion of interactions with dedicated adults;
- to provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood; and
- to make available vouchers for education and training, including postsecondary training and education, to youths who have aged out of foster care.

The federal Act provided money to Florida and the other states for these purposes. In 2002, Florida first enacted § 409.1451, creating a continuum of services for foster youth and former foster youth to “enable older children in foster care and young adults who exit foster care at age 18 to make the transition to self-sufficiency as adults.”

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## CHILDREN AND YOUTH WITH DISABILITIES

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For each of the Independent Living programs described herein, foster children and former foster youth should be treated equally, regardless of disabilities. The Department of Children and Family’s (department) rules are inconsistent in specifying when accommodations are permitted. When the rule is silent as to a youth with disabilities, the guardian ad litem should advocate that the youth should nonetheless receive whatever accommodations are necessary in light of those disabilities; the federal Americans with Disabilities Act (ADA) applies to each of the Independent Living programs.

The law requires equality of treatment for youth with disabilities, in § 409.1451(3)(a) (a general section on preparation for independent living) and in § 409.1451(5)(b)4 (concerning the Road to Independence program).

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## SERVICES FOR FOSTER CHILDREN

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### **Normalization**

In the past, foster children have been treated differently than children of the same age in intact families. Although the goal of protecting foster children from further harm was laudable, the effect of too much regulation was to set foster children apart from similarly aged children in the

community. Older foster youth, working through their youth advisory boards, advocated for treatment called “Normalization”. Normalization means that all foster children should be permitted to engage in age-appropriate life activities. § 409.1451(3)(a).

The department has expanded on the legislative directive in its rules. The department has adopted rules to be found in the Florida Administrative Code (F.A.C.). The child welfare rules generally are found in Chapters 65C-28, 65C-29 and 65C-30, F.A.C. The rule on “normalcy” is found in Rule 65C-30.07(10), Fla. Admin. Code (2007).

The rule is quite detailed, and advocates should be familiar with its provisions. Foster children are to be permitted to engage in extra-curricular school activities, and social activities, that are normal for the child’s age and maturity level. This even includes being given the opportunity to learn to drive a car.

The law requires the case worker to develop a written plan with the foster parent and the child, to include goals and objectives, to achieve normalcy. The law requires this plan to be reviewed quarterly, although it does not specify who is to conduct the review. § 409.1451(3)(a).

Provided the age-appropriate activity is in a written plan developed and signed by the foster parent or caregiver, the child and the case manager, the foster parent shall not be held responsible for, or have their foster care license placed at risk, as a result of the child’s participation in the age-appropriate activity. In other words, this bill removes the concerns of foster parents and group home staff in allowing a foster child in their care to participate in the normal activities of growing up, such as sleep-overs, going to the movies with friends, etc.

The issue here is at what age of the foster child this protection kicks in. This normalcy language is in § 409.1451, which is designed to provide a system of services for “older foster children” and young adults who age out of foster care. The statute specifically states that the department shall serve children “who have reached 13 years of age but are not yet 18 years of age” by providing the services specified. § 409.1451(2)(a).

<p><b>PRACTICE TIP:</b> Advocacy: provide a copy of the specific rule to the court and ask the court to enforce the rule when appropriate for the child’s best interests. When the rule and the statute are in conflict or the rule exceeds its statutory authority, argue that the rule is illegal and cannot be applied. (May need to challenge the validity of the rule in an administrative proceeding.)</p>
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### **Driver’s License - § 322.09(4)**

Currently a foster parent or an authorized representative of a group home can sign a driver’s license application for a foster child and not have negligence or willful misconduct of the foster child while operating a motor vehicle imputed to him or her.

New legislation that went into effect July 1, 2007, adds protection from liability to the caseworker at the agency where the state has placed a minor, provided the driver’s license is part of a court-approved transition plan. Before a case worker signs a foster child’s driver’s license application, the case worker must also notify the foster parent or other responsible party of his or her intent to sign the application.

### **Independent Living Eligibility - § 409.1451(2)(b)**

Section 409.1451 expanded to provide a new category of youth who are eligible to participate in the post-18 IL programs. Now, the department shall serve youth who

- were in foster care when they turned 18; or
- were adopted from foster care or were placed with a court-approved guardian and had reached 16 years of age; and
- spent a minimum of 6 months in foster care within the 12 months immediately preceding such adoption or placement.

The point of this expansion is to encourage a permanent placement after a youth reaches the age of 16, while realizing that this youth most likely will continue to need help upon reaching adulthood.

### **Medicaid - § 409.903(4)**

New legislation increases the age of former foster youth who are eligible to receive Medicaid from 20 to 21. Effective July 1, 2007, therefore, any young adult who is eligible to receive services under § 409.1451(5) (i.e., any of the three Independent Living programs), will now qualify for Medicaid services without any income or resource test.

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## SERVICES FOR OLDER FOSTER CHILDREN

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Florida's Independent Living Program requires that assessments to determine need, and services to address the determined needs, begin to be provided at the age of 13. The program requirements are found in § 409.1451. Many of the required assessments and plans to address the children's and youths' needs must be reported to the dependency court as part of the judicial review proceedings.

The law requires that whenever a document is to be reviewed by a foster child, the department must make good faith efforts to fully explain those documents, and allow the foster child to ask all necessary questions concerning that document. § 409.1451(3)(a)(6).

### **Educational Planning**

Upon turning 13, a foster child must choose an educational goal and a career path. § 409.1451(3)(b). The educational plan must:

- Identify core courses necessary to qualify for chosen goal;
- Identify elective courses that are necessary and helpful to achieve the goal; and
- Identify the necessary GPA, if any, to meet the educational goal.

The plan should also identify an "academic advocate" or mentor. The youth must also be encouraged to participate in community service activities. This is both to encourage youth to become good citizens, as well as to ensure the youth meets any community service activities required by, or helpful for securing admission to a chosen college or for qualifying for scholarships.

The plan is to be developed with participation by the foster parents, the child, and at least one of the child's teachers. The plan must be in writing, and included in each judicial review.

The foster child must be given the opportunity to change goals. The statute does not specify how often this may occur; presumably this is unlimited. Each time the child changes goals, however, it will be necessary to revisit the educational plan.

#### **Pre-Independent Living Services - § 409.1451(4)(a)**

These services are to be offered to foster youth between the ages of 13 and 15. The specific services to be offered are: life skills training, educational field trips and conferences.

The department must conduct annual staffings at ages 13 and at 14. The staffings must include a “pre-independent living assessment” and evaluation of progress. All assessment results and all staffings are to be written, signed by the child (who is to participate in the staffing, by implication), and included in the Judicial Review Social Study Report for each judicial review.

For youths aged 14 forward, each year following the foster youth’s 14<sup>th</sup> birthday, the youth must receive detailed information on the services that may be provided by the Road to Independence Program, educational grants and waivers. The case plan beginning at the 14<sup>th</sup> year must include information concerning the foster child’s specific educational and career path.

#### **Life-Skills Services - § 409.1451(4)(b)**

Life skills services are to be provided to foster youth between the ages of 15 and 18. These services include: training about banking and budgeting, interviewing and parenting skills; educational support, employment training and counseling. Information concerning social security benefits and public assistance must also be provided. The specific services provided to each foster youth are to be based upon an Independent Living skills assessment.

The department must conduct staffings for each youth at least every six months to ensure that appropriate services are provided, and to evaluate the youth’s progress. Both the assessments and results of the staffings must be reduced to writing, signed by the youth and included in the Judicial Review Social Study Report (JSSR).

#### **Special Requirements for the Youth’s Seventeenth Birthday - § 409.1451(4)(b)4**

During the calendar month following the 17<sup>th</sup> birthday, the department must conduct an IL assessment to determine the youth’s skills and abilities to live independently and become self-sufficient. This is the last year to ensure the youth has the necessary skills and support services. While it is important to monitor all the required assessments, it is crucial that this assessment be done timely and accurately, and reported to the court.

There is to be a special Judicial Review within 90 days of the 17<sup>th</sup> birthday, to review the 17<sup>th</sup> birthday assessment and plan. See § 39.701(6)(a), for special contents of this Judicial Review. See Form 8.973, Fla.R.Juv.Pro. for the specific Judicial Review form for the reviews for a foster youth who is over 17. At this review hearing, the court should be asked to enter the order contemplated by § 39.701 concerning the removal of disabilities of non-age for purposes of securing housing and banking upon the 18<sup>th</sup> birthday.

There is to be an updated case plan at this Judicial Review. § 39.701(6)(b). This case plan must address the unmet needs that are revealed by this 17<sup>th</sup> year assessment.

The Florida Legislature felt this assessment is so important, that it created a specific statute granting the court the authority to find the department in contempt for failing to comply with these special requirements. § 39.701(6)(c).

**PRACTICE TIP:** The assessments, planning and provision of services for a 17 year old are so important, that the legislature specifically provided for a contempt action by the court. If the agency has not fully complied with its statutory and regulatory obligations, the guardian ad litem should ask the court to issue an Order to Show Cause directed at the agency in accordance with Program Standard 2.7.2. Time is now even more “of the essence” than previously. § 39.701(6)(c).

### **Subsidized Independent Living - § 409.1451(4)(c)**

Subsidized Independent Living (SIL) is a hybrid service that allows a foster youth who is between the ages of 16 and 18 to live semi-independently in an unlicensed setting, while still receiving caseworker and judicial oversight, with the agency paying the foster care board rate directly to the youth. There is a great deal of advocacy that needs to happen concerning this program.

A formal SIL evaluation must be completed for eligible youth aged 16 or older. § 409.1451(4)(c)2.

For youth that generally meets the SIL requirements, placing that youth (aged 16 or older) directly into the custody of a non-licensed person, unless it is a newly-approved guardianship, amounts to malfeasance, if the placement keeps the youth from eligibility for any of the post-18 Independent Living programs. And although eligibility for the Road to Independence Program has been expanded, eligibility for the other two Independent Living programs continue to require the youth’s actual placement in departmental custody. However, if the youth applies for the SIL program, the youth can still move into the unlicensed home of the relative or non-relative, while technically remaining in departmental custody. The difference is that the youth will continue to qualify for post-18 Independent Living services. Also of importance, the youth will receive the foster care board rate (an amount that is higher than the relative caregiver benefit that could be paid to the relative custodian), which he or she can then use to pay the custodian a negotiated amount of money monthly for room and board.

The statutory requirements for the SIL program are as follows: The youth must be between the ages of 16 and 18; the youth must be adjudicated dependent; the youth must be living in licensed out-of-home care for at least 6 months prior to entry into SIL; the youth has a permanency goal of adoption, independent living, or long-term licensed care (presumably adoption of APPLA); the youth attends school full-time (this includes a GED program); and the youth is able to demonstrate independent living skills, as determined by the department. (Generally, the required independent living skills assessments will be used to determine that the youth possesses the necessary IL skills.)

The department lists other requirements beyond the statutory requirements outlined above. However, these non-statutory requirements can be waived when appropriate. If a youth meets the statutory requirements, it is worth requesting a waiver. Another approach is to ask the Juvenile Court to order a waiver of any non-statutory requirement the agency is imposing, if it is in the youth’s best interests to do so. In any instance in which the youth’s best interests require she or he participate in the SIL program, but the youth does not meet one of the non-statutory requirements, it is possible to file an administrative rule challenge alleging that the department exceeded the authority delegated to it by the legislature in adopting additional SIL requirements not required by the Legislature.

## Advocacy Issues

Guardians ad litem should require timely staffings, attend those staffings, and advocate for the provision of necessary services, taking any deficiencies to the Juvenile Court. Advocacy is especially important for the 17<sup>th</sup> birthday staffings and special judicial review hearings, as this is the last year the court can assist in helping the child be prepared for life as an independent adult - unless you or the foster youth requests an extension of the court's jurisdiction up to the 19<sup>th</sup> birthday.

**PRACTICE TIP:** The guardian ad litem shall be invited to participate in any staffings per Rule 28.009 of the Florida Administrative Code.

The guardian ad litem should advocate for the expedition of necessary services for the youth.

Ensure that detailed information is included in the Judicial Review Social Service Report.

Ensure that the youth participates in the development of, and then signs onto this document. § 409.1451(4)(b)4; § 39.4085(12).

Ensure the child is present; try to have these Judicial Reviews scheduled so that the child does not have to miss school to attend;

ensure the agency provides transportation for the child to court.

## Extension of Jurisdiction

The juvenile court may, upon the youth's motion, extend its jurisdiction until the youth reaches the age of 19, for the purpose of determining whether "appropriate aftercare support, Road-to-Independence Scholarship, transitional support, mental health, and developmental disability services, to the extent otherwise authorized by law, have been provided to the formerly dependent child who was in the legal custody of the department immediately before his or her 18<sup>th</sup> birthday." See Form 8.974, Fla.R.Juv.P., for a petition to extend jurisdiction. (Note: many IL Coordinators talk with the youth about "extending foster care." There is no such thing! This extended court jurisdiction is for the purpose of the court's continuing oversight of the agency. The former foster youth is an adult, and has all the privileges and obligations of an adult, upon reaching the 18<sup>th</sup> birthday. By definition, foster care terminates upon the youth's 18<sup>th</sup> birthday.)

Although it has not yet been discussed, it is important to keep in mind that the former foster youth has an informal administrative appeals process available to challenge the provision of post-18 IL services. How is this overlap of jurisdictions supposed to work? The Legislature did not say. Advocates now are using the courts to challenge as many of the post-18 IL appeal issues as possible for youth between the ages of 18 and 19. One issue of utmost importance is that when a youth receives post-18 financial assistance, if the youth is subsequently terminated from that assistance or the amount of the assistance is reduced, the only way to continue the financial assistance at the initial amount is to utilize the administrative appeals process. This process includes what is called "aid paid pending" for any youth who timely appeals the IL determination with the department. This appeals process is detailed in Rule 65C-31.009, F.A.C. and is discussed in detail below.

An important use for extended jurisdiction is to enforce court orders entered during the youth's minority. The author has been advised that in some parts of the state, the department essentially "wait out" the time until the youth ages out of the system, rather than complying with court orders for the department to provide services prior to the youth's 18<sup>th</sup> birthday. (One example would be the provision of mental health and/or alcohol and substance abuse services, including necessary evaluations.) By extending the court's jurisdiction for another year, provided the youth wants the services ordered by the court, the agency's failure can still be raised with the court.

## SERVICES TO FORMER FOSTER CHILDREN

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Young adults between the ages of 18 and 23, who have aged out of the foster care system (i.e., were in foster care or subsidized independent living on their 18<sup>th</sup> birthday) have access to certain independent living programs offered by the department. Those programs are described in § 409.1451.

These programs are not entitlements, as the enacting legislation specifically conditions the young adult's receipt of these benefits on sufficient appropriations. In all other respects, however, these are property rights belonging to the youth, and any abridgement of these rights is subject to an administrative challenge. That is, if a youth is denied a benefit upon application, or has any benefits reduced or terminated, that youth has the right to an administrative fair hearing.

There are three Independent Living programs for former foster youth: the Road to Independence Program; transitional support services; and after-care support services. For all three programs, the youth must have been adjudicated dependent. For the aftercare support services and transitional support services programs, the youth must have been in foster care on his or her 18<sup>th</sup> birthday. And for the transitional support services program, the youth must have spent a minimum of six months in foster care over his or her lifetime. By administrative rule, the department is interpreting the "in foster care" requirement to include youth who are in a foster home, a group home, a subsidized independent living program, a DJJ facility, hospital, or even on runaway status. The department is focusing on the fact that the child has been placed into the legal custody of the State/ Department through a Chapter 39 dependency proceeding.

### **Tuition and Fee Exemption - §1009.25**

There are four categories of former foster youth eligible for the exemption from paying fees and costs, including laboratory fees, to attend any public (i.e., Florida) educational institution. This benefit applies to the following: All youth who were in either departmental or relative custody on their 18<sup>th</sup> birthday, and who were adjudicated dependent; youth who were adopted from departmental custody after May 5, 1997; and youth who are placed in a guardianship by the court after turning 16 and after being in departmental custody for six months or longer. This will make it easier for former foster youth to attend school part-time and still receive some financial help from the department.

### **Remaining in the Foster Home**

All former foster youth who are eligible for any one of the post-18 Independent Living programs are allowed to continue to reside in their former foster or group homes. This is discussed in greater detail in the Section on the Road to Independence Program.

### **Removal of Disabilities of Non-Age - §743.045**

Although this language is anachronistic, it is the "disabilities of non-age" that limit a minor's right to enter into a binding contract. And this is why landlords will not accept or process an application from a minor. Section 743.045 removes the "disabilities of non-age" from all youth who have reached 17 years of age, were adjudicated dependent, and are in the legal custody of the department in foster care or subsidized independent living. This removal is solely for the purpose of entering into a contract for the lease of residential property when the youth turns 18. Section 39.701(6) requires the court to issue an order, separate from the order on judicial review (for the protection of the youth's privacy), stating that the disabilities of non-age have been removed pursuant to § 743.045.

Advocates will need to ensure that the courts enter these orders for youth aging out of foster care. Perhaps more importantly, advocates will need to educate landlords about the law, and convince them that the court order permits a 17 year old foster youth to have his or her lease application processed during the youth's last year of minority.

### **Removing Disabilities of Non-Age for Banking - § 743.044**

This new section in Chapter 743 is very similar to the removal of disabilities section, removing the disabilities of non-age for foster children who have reached the age of 17 in order to be able to execute necessary documents to find housing for themselves upon turning 18.

A foster child will be treated as an adult, and will be able to enter into contracts for "depository financial services" i.e. checking and savings accounts, if he or she:

- is 16 years of age or older;
- has been adjudicated dependent;
- resides in out-of-home placement;
- has completed a financial literacy course; and
- receives a court-order removing the disabilities of non-age for banking purposes.

### **Road to Independence Program (RTI) - § 409.1451(5)(b)**

This is the premiere program that can potentially provide the largest amount of money to young adults. The maximum scholarship amount is \$12,158.64 annually. By operation of Rule 65C-31.007(2)(b) [for high school and GED students], and Rule 65C-31.008(2)(b) [for post-secondary students], the scholarship amount is a maximum of \$ 1,013.22 paid monthly. The minimum monthly scholarship amount, by statute, is \$ 25.00.

To qualify for the Road to Independence Program, a youth must meet the following conditions: the youth must be a Florida resident; the youth must first be approved for the scholarship prior to the youth's 21<sup>st</sup> birthday; and the youth must be enrolled in school full-time. The youth must have been adjudicated dependent, spent at least six months in foster care, and have been in foster care or subsidized independent living on his or her 18<sup>th</sup> birthday. This program also includes youth who have been adopted from foster care after they reached the age of 16, as well as to youth who, after spending a minimum of 6 months in the custody of the department after reaching 16 years if age, are placed into a guardianship by the court.

New legislation adds an additional category of youth who will be eligible for the Road to Independence program: Any foster child who has earned a standard high school diploma, a special diploma or a special certificate of high school completion. This means that if a youth completes high school prior to turning 18, he or she will be able to go on to attend either a community college, college or university, or a qualifying vocational program while receiving the scholarship.

For a youth with a documented disability who will be attending secondary education, i.e., high school, GED or vocational schooling, the youth will be eligible for the program when only attending school part-time, provided part-time status is a necessary accommodation for the disability.

The agency's Independent Living Coordinator should help the youth apply for the award; for a youth currently in foster care, this should be done approximately three months before the 18<sup>th</sup> birthday. The agency must make a decision on each application within 10 working days, and must notify the youth of the decision within 10 working days after the decision is made.

When an application has been approved, the payments begin the first day of the month the recipient turns 18, for youth who apply before ageing out of the system, or at the beginning of the month following approval of the application. Rule 65C-31.004(1)(c)3, F.A.C.

Department rules require RTI recipients to provide documentation of enrollment at the following times:

When the youth submits the initial application; at the end of each semester or grading period; at the time of application for renewal of the award; if the youth applies for reinstatement of the award after either withdrawing or being terminated from the program; and at any other time requested in writing by the department when continued eligibility is in question. Rule 65C-31.006(3), Fla. Admin. Code.

The RTI award may be renewed up to the 23<sup>rd</sup> birthday, unless the benefits are terminated either for cause, or because the educational goals have been met. RTI cannot be used to pay for an advanced degree. Specifically, a renewal of the award is available each year up to the 23<sup>rd</sup> birthday, provided the youth continues to meet the initial eligibility criteria; the youth makes “appropriate progress”, as determined by the educational institution; and the youth has not yet reached one of statutorily enumerated educational goals.

Reinstatement of the RTI award is available for any youth who voluntarily withdraws or drops out of the program, or is terminated from the program, provided the youth meets all eligibility criteria upon application for reinstatement. It is important to note that reinstatement of the award is only available *once*. In some instances, when a youth has been terminated from an award and appeals that termination, the CBC will suggest that it will reinstate the youth provided the youth drops the appeal. If this is a true reinstatement, unless the youth’s advocate believes the youth more likely than not would lose on appeal, accepting this type of “deal” could be a real disservice to the youth. Life circumstances, including illness or the birth of a child, might require a youth to withdraw from the program for a period of time. The youth is only eligible for one reinstatement.

It is important to note that a youth receiving RTI is also permitted to apply for, and receive, services from both the after-care support and the transitional support programs while receiving RTI benefits. This can be helpful if a youth has a financial emergency, for example, a car needing repairs, or needs medical or dental care not covered by Medicaid or other health insurance.

### **Remaining in the Foster Home**

All youth qualifying for any one of the post-18 Independent Living programs are allowed to reside with the foster family or group home in which he or she was living on the 18<sup>th</sup> birthday. The department is required to arrange another licensed foster home or group care provider for the youth. Providing suitable arrangements can be made between the former foster youth and the foster home, including arrangements for how the youth will compensate the foster home (whether individual or group). This service can serve as temporary housing for a youth until he or she is able to arrange for renting an apartment or home.

However, the usefulness of this provision is debatable. At least in some parts of the state there are insufficient numbers of family foster homes. In this situation, older youth often reside in group homes. It is important to note that many group homes charge far more per resident than the board rate, due to the provision of in-home services, placing the group home beyond the financial reach of the former foster youth.

**PRACTICE TIP:** It is possible that the youth's advocate can work with the group home providers to request a reduced rate for a short term rental by a foster youth aging out of the system.

### **Transitional Support Services - § 409.1451(5)(c)**

This is a program of short-term services that are critical to the youth's own efforts to achieve self-sufficiency. The services may include financial help, housing, counseling, employment, education, mental health, and disability services. These services are often used by the department to provide financial help for youth attending school part-time, and who are therefore not eligible for the Road to Independence scholarship program.

The general eligibility criteria of this program are that the applicant must have been adjudicated dependent, in foster care or subsidized independent living a minimum of 6 months and have been in foster care on his or her 18<sup>th</sup> birthday and has not yet reached the 23<sup>rd</sup> birthday. Additionally, the youth must demonstrate that the requested services are critical to his or her efforts to achieve self-sufficiency and to develop a personal support system. These efforts can include funding for part-time school attendance.

The statute does not determine any specific maximum or minimum benefit. The amount provided to the youth will depend upon the youth's needs and the amount of funding available to the department for this purpose.

The law provides that the amount of the benefits will be determined pursuant to a "needs assessment." Although Rules 65C-31.007 and 65C-31.008 provide needs assessment forms and instructions for youth in school, those assessments will need to be modified for use in determining transitional benefits. Hopefully the department will engage in a rule development workshop for this purpose.

Rule 65C-31.005 restricts these services to a maximum three-month benefit period. Provided the youth can demonstrate that continuing services are "vital" for achieving self-sufficiency, they can be renewed indefinitely, provided the department has the funds with which to continue to pay these benefits.

The rule outlines the application process. If there is a dispute concerning the contents of the transitional plan, the dispute may be resolved through an informal agency grievance process, rather than through a fair hearing. The contents of the transitional plan are very important, as progress towards accomplishing the plan's goals is necessary in order for the services to be renewed beyond the three month period. The department sometimes treats transitional plans they way they do a Chapter 39 "case plan", i.e., they require "substantial compliance" or even actual compliance with the plan. This is another issue that might be further elucidated by challenges in fair hearings. The law is clear that the young adult must be accountable for "the completion of or making progress towards the completion of these tasks."

### **Aftercare Support Services - § 409.1451(5)(a)**

This program is also available to "assist young adults who were formerly in foster care in their efforts to continue to develop the skills and abilities necessary for independent living." The statute lists services to be provided, with the list ending with "temporary financial assistance." The department interprets this program to provide short-term services and cash assistance. Much of the rule describes cash assistance to prevent homelessness. 65C-31.003, F.A.C.

Unlike the RTI and transitional programs, this program only requires that the youth have been in

foster care at age 18. In other words, any former foster youth is eligible for this assistance, even if he or she only spent one day in foster care, provided that day was the day the youth turned 18. These services are available to the youth at any time prior to the youth's 23<sup>rd</sup> birthday.

Unlike the other two programs, in this program the services worker is to determine whether to make the payment directly to the young adult, or whether to pay all or a portion of the funds directly to a service provider. Rule 65C-31.003(4) is less than clear, since it directs that the services worker is to make the choice of providing payment but seems to limit the services worker's choice to make the payments directly to a service provider only at the request of the young adult. Reading this rule in the context of the other two programs, this rule should be interpreted to mean that the youth makes the decision as to whether or not to receive the payments directly, or to have the department send them to the youth's vendors.

### **Appeals: Fair Hearings Procedure**

Any former foster youth may challenge any "adverse" decision by the department concerning the youth's application for Independent Living program benefits. An adverse decision is any decision that negatively affects the interests of the youth. The typical decisions that are appealed are decisions that deny benefits, terminate benefits, or that set the amount of the benefit, based upon need. The appeal utilizes the provisions of Florida's Administrative Procedures Act, at Chapter 120, Fla. Stat.

The department has chosen the option of using a "Hearing Officer" from the department's Office of Appeal Hearings, which is the fair hearing office within the Department Office of Inspector General. It is important to note that the hearing officers generally are not lawyers.

- Telephone: (850) 488-1429.
- For a general overview of the process directed to a layperson, see <http://www.dcf.state.fl.us/admin/ig/appeal.shtml>.

The department becomes the Respondent in these cases. Also, the department is almost always represented by an attorney with the Office of the Attorney General.

If the guardian ad litem remains involved with a former foster youth due to extended court jurisdiction, the guardian ad litem might decide to raise the appeal issues with the dependency judge. However, if a youth receives a decision that decreases or terminates the amount of assistance the youth receives, that youth must utilize the fair hearing process to appeal, in order to continue to receive the benefit in the amount prior to the notice being appealed. (This is called "aid paid pending.") If the guardian ad litem is unable to pursue the administrative appeal, the guardian ad litem should refer the young adult to the local Legal Aid or Legal Services office for help with the administrative appeal.

There are many legal issues that should be raised in the fair hearing, including what expenses were calculated into the needs assessment; the timing of the first payment upon ageing out; and whether the CBC complied with the youth's request to remain in their actual foster home, or be moved to another foster home, upon turning 18, etc.

An appeal of an adverse fair hearing decision will go to the District Court of Appeal, either the First DCA, or the district in which the youth resides. If a youth appeals an adverse hearing decision, he or she should definitely have legal counsel at that point.

PRACTICE TIP: Be sure to go to the Guardian ad Litem website at [www.GuardianadLitem.org](http://www.GuardianadLitem.org) for additional resources. Review the Teen Resources section and the Resources by Topic / Independent Living section of the website.