
CASE PLANS

Federal law requires the Department of Children and Families to develop a case plan for every child in out-of-home care. 42 U.S.C. § 671(a)(16); 45 C.F.R. § 1356.21(g)(2). Florida law goes further and requires a case plan in every dependency case. § 39.6011. At their most basic, case plans outline the services or treatments that will be offered to the parents and child, and explain what parents must do to achieve reunification – outlining the plan for the case. Good case plans, however, are much more than that. They provide information to the parties about the health and education needs of the child. They provide contact information for service providers, educators, and doctors. They are a tool to evaluate the child’s temporary placement. They provide legal notice to parties of their rights and obligations. They explain the deficits in the home that led to the child’s dependency. They detail the steps the department plans to take to achieve permanency options, including independent living and adoption, and describe a permanency goal. They outline long-term and short-range goals. They are, in essence, the backbone of the case.

Federal law requires the case plan to be developed within 60 days of the child’s removal from home. 45 C.F.R. §1356.21(g)(2). A case plan must be prepared, but need not be submitted to the court, for a child who will be in care no longer than 30 days unless that child is placed in out-of-home care a second time within a 12-month period. § 39.6011(6)(b)1. The plan must be submitted to the court before the disposition hearing for the court to review and approve. § 39.6011(6)(b)2. Parents have the right to seek assistance from anyone in the development of the case plan, and the department must inform the parents of this right. § 39.6011(1)(b).

Florida’s statutes contain provisions to facilitate case planning early in the case and allow parents to begin completion of tasks as soon as possible. If the parent’s substantial compliance with the case plan requires the department to provide services to the parents or the child and the parents agree to begin prior to the case plan’s acceptance by the court, the department must make appropriate referrals for services immediately. § 39.6011(6)(a). Participation in the development of a case plan is not an admission to any allegation of abuse, abandonment, or neglect, and it is not a consent to a finding of dependency or termination of parental rights. § 39.6011(1); see also § 39.402(15)(requiring the department, at the shelter hearing, to make available to parents or legal custodians seeking voluntary services, any referral information necessary for participation in such services and clarifying that such participation shall not be considered an admission or other acknowledgement of the allegations in the shelter petition).

The Case Plan Belongs to the Child

States are required to provide for the development of a case plan for each child. 42 U.S.C. § 671(a)(16)(2000) The department shall prepare a draft of *the case plan for each child* receiving services under this chapter. § 39.6011 (1).

Case Plans Expire After 12 Months

The case plan must be as short as possible. § 39.6011(2)(d). The plan’s compliance period expires no later than 12 months after the date the child was initially removed from the home or the date the case plan was accepted by the court, whichever occurs sooner. § 39.6011(2)(d). When the case

plan expires, a new case plan must be developed. See § 39.6013,) (articulating permissible grounds for amendment of case plan, which do not include amending to provide additional time), and compare Chapter 2006-86, Laws of Florida affirmatively deleting statutory authority to extend case plans from former §§ 39.601(7) and 39.701(9)(F). Fla. Stat.(2005).

All the Parties Are Entitled To a Copy of the Case Plan

The department must provide copies to the parties including the child, if appropriate, immediately after the parties sign it. § 39.6011(6)(b). Additionally, the department must serve a copy to all parties not less than 3 business days prior to the disposition hearing. § 39.6011(7). In the case of an amended case plan, a copy must immediately be given to the parties. § 39.6013(7).

DRAFTING EFFECTIVE CASE PLANS

The case plan must be a written document that assures the child receives safe and proper care. 42 U.S.C. §§ 675(1), 675(1)(B). It must describe services that will be offered to the child, the parents, and the foster parents. § 39.6012. The services must be designed to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of the child, or facilitate the child's permanent placement. § 39.6012(1)(a).

PRACTICE TIP: Florida law holds that parental rights constitute a fundamental liberty interest. Padgett v. Dep't of Health & Rehab. Servs., 577 So. 2d 565, 571 (Fla. 1991). Before a parent's rights to a child may be terminated, the state must show termination of parental rights is the least restrictive means to protect the child. *Id.* In Padgett, the Florida Supreme Court held that, in ordinary cases, to meet this burden the state had to prove it made a good faith effort to rehabilitate the parent and reunite the family by offering the parents a case plan and an opportunity to comply with it. Therefore, ensuring the case plan complies with the statute, is designed to meet the family's needs, and is enforced (through advocating for necessary referrals and services) is critical to determining whether the family should be reunified and is the foundation for terminating parental rights.

- The case plan must be developed in a face-to-face conference with the parent of the child, the GAL, and if appropriate, the child and the temporary custodian of the child. § 39.6011(1)(a).
- The case plan must be limited to as short a period as possible for accomplishing its provisions and expires no later than 12 months after the date of the child's initial removal or the date of case plan acceptance by the court, whichever occurs sooner. § 39.6011(2)(d).
- When approving the case plan, the court will determine whether the plan is meaningful and designed to address facts and circumstances upon which the court based the finding of dependency in involuntary placements or whether the plan is meaningful and designed to address facts and circumstances upon which the child was placed in out-of-home care voluntarily. § 39.603(1)(f).
- The case plan must list the tasks necessary to finalize the permanency placement and shall be updated at the permanency hearing if necessary. § 39.621(8).

Other Issues Regarding Drafting Case Plans

Participation of the child in the case planning process. Section 39.6011(1)(a) specifies that the child is to participate in case plan development if appropriate and subsection (3) requires the child's signature on the case plan. See also Rule 8.255(b), Fla. R. Juv. P. (The child has a right to be present at hearings unless the court finds the child's mental or physical condition or age is such that a court appearance is not in the child's best interests).

Signature on the case plan. The case plan must be signed by all parties, except the child's signature may be waived due to age or incapacity to participate. § 39.6011(3). Participating in the development of a case plan is not an admission to any allegation of abuse, abandonment, or neglect, and it is not a consent to a finding of dependency or termination of parental rights. § 39.6011(1). Signing the case plan constitutes an acknowledgement that the case plan has been developed by the parties and that they are in agreement as to the terms and conditions contained in the case plan. § 39.6011(3). Signing the case plan does not constitute an admission to any allegation of abuse, abandonment, or neglect and does not constitute consent to a finding of dependency or termination of parental rights. § 39.6011(3). The refusal of a parent to sign the case plan does not prevent the court from accepting it. § 39.6011(3).

Failure/inability of parents to participate. Although parents are entitled to participate in case plan development, if they refuse or are unable to participate, the department must develop the plan without them and document the reasons for the parents' lack of participation. § 39.6011(1)(c); 65 Fed. Reg. 4057 (Jan. 25, 2000). A parent who has not participated in the development of a case plan must be served with a copy of the plan developed by the department, if the parent can be located, at least 72 hours prior to the court hearing. § 39.603(3). The refusal of a parent to sign the case plan does not prevent the court from accepting it. § 39.6011(3). The parent is entitled to a court review of the plan prior to the initial judicial review and must be informed of this right by the department when served with a copy of the plan. § 39.603(3). If the location of an absent parent becomes known to the department, the department shall inform the parent of the right to a court review at the time the department serves the parent with a copy of the case plan. § 39.603(3).

Adoption. When the permanency goal for a child is adoption, the case plan must include documentation of the steps being taken to find an adoptive family or other permanent living arrangement for the child. § 39.6011(5). At a minimum, the documentation must include child-specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems. § 39.6011(5).

CASE PLANS FOR YOUNG ADULTS

Children who are 13 - 18 and in foster care are eligible for independent living services which should be included in their case plans. § 409.1451(2).

- For children who are 13 - 15 and in foster care, an annual staffing must be conducted to ensure pre-independent living training and services are being provided as determined by the pre-independent living assessment. § 409.1451(4)(a)3. At the first staffing following the child's 14th birthday, the case plan must include an educational and career path based on both the abilities and interests of the child. § 409.1451(4)(a)4.

- Children who are 15 - 18 years in foster care should be given a life skills assessment which will determine the child's need for life skills services. § 409.1451(4)(b). A staffing should be held every six months to ensure the appropriate training and services as determined by the assessment are being received and to evaluate the child's progress in developing independent living skills. Id.
- In the month after the child's 17th birthday, the child shall be given an independent living assessment. § 409.1451(4)(b)4. The department must provide services and training to the youth based on this assessment. Id.
- At the first judicial review hearing after the child's 17th birthday, the department must file an updated case plan that includes specific information related to independent living services provided since the child's 13th birthday, or since the date the child came into foster care, whichever came later. § 39.701(6)(b).
- For dependent children who are 16 and in out-of-home placements consideration should be given as to whether the youth should have the disability of non-age removed for purposes of securing depository services, such as checking and savings accounts, under section 743.044. The youth must complete a financial literacy class prior to getting such an order from the court. § 743.044.
- For dependent youth who are 17 and in foster care or subsidized independent living, the court must enter an order removing the disability of non-age for the purpose of executing contracts for residential leases under section 743.045, to ensure the youth can obtain housing upon their 18th birthdays. § 39.701(6)(a).

AMENDING CASE PLANS

After the case plan has been developed under section 39.6011, the tasks and services agreed upon can only be changed or altered as provided in section 39.6013. Case plans should be amended whenever changes are appropriate. 65 Fed. Reg. 4052 (Jan. 25, 2000).

- The case plan can be amended by the court or motion of any party with a showing of preponderance of the evidence to: change the goal, use concurrent planning, or add or remove tasks for the parents. § 39.6013(4).
- To amend services *for the child*, party must show competent evidence showing need for amendment. § 39.6013(5).
- The need to amend the case plan may be based on information discovered or circumstances arising after approval of the case plan for:
 - a previously unaddressed condition;
 - the child's need for permanency;
 - the failure of a party to substantially comply with a task in the original case plan, including the ineffectiveness of a previously offered service; or

- an error or oversight in the case plan.

§ 39.6013(4).

Other Issues Regarding Amending the Case Plan

Enforcement. Ensure that any new obligation of any party is amended into the case plan. H.G. v. Department of Children and Families, 916 So. 2d 1006 (Fla. 4th DCA 2006)(holding that when determining the parent's substantial compliance with the case plan, the fact that the judge ordered the parent to take part in certain services could not be considered because the ordered services were never incorporated into the case plan).

No extension of case plans. The list of grounds for amendment of a case plan in section 39.6013 does not include extension of time for completion of tasks as a permissible reason to amend a case plan. Compare § 39.6013, Fla. Stat. (2007) with Chapter 2006-86, Laws of Florida, (affirmatively deleting statutory authority to extend case plans from §§ 39.601(7) and 39.701(9)(f), Fla. Stat. (2005)).

CONCURRENT CASE PLANS

A concurrent case plan is a plan with two permanency goals in which efforts to reunify are made at the same time another permanency goal is pursued. § 39.01(18). Federal and Florida law specifically permit concurrent planning. 42 U.S.C. § 671 (a)(15)(F); 45 C.F.R. § 1356.21(b)(4); § 39.6011(2). Each family should be evaluated to determine the appropriateness of concurrent planning. See 45 Fed. Reg. 4054 (Jan. 25, 2000).

- If concurrent planning is being used, the case plan must include a description of the goal of reunification and a description of one of the remaining permanency goals described in section 39.01(51). § 39.6011(2).
- The case plan can be amended at any time to employ the use of concurrent planning. § 39.6013(4).
- At the six-month judicial review, the court must make findings regarding the likelihood of the child's reunification with the parent or legal custodian within 12 months after the removal of the child from the home. If the court finds reunification is not likely, the court must make written finding and DCF must file a motion to amend the case plan to use concurrent planning within 10 business days of the court's written finding. § 39.701(9)(e).
- If concurrent planning is in place at the six-month judicial review, the case plan must document the efforts the department is taking to complete the concurrent goal. § 39.701(9)(e).
- If a concurrent case plan is in place at the permanency hearing, the court may choose between the permanency goal options presented and shall approve the goal that is in the child's best interests. § 39. 621(8).

PRACTICE TIP: Advocate for the use of concurrent planning early in the case when appropriate. Advocate for adoption of a single goal when a parent has acted in a way that makes reunification impossible. See § 39.806(1)(e)2. (authorizing termination of parental rights prior to expiration of the case plan when a parent materially breaches the plan).

Concurrent Planning - Case Plan Task Examples

Services for the Children in All Case Plans

- **Counseling:** The department will provide a referral to be evaluated/receive counseling etc. within 72 hours of case plan acceptance..
- **Disability Services** for the child, if applicable.
 - The department will apply for SSI on the child's behalf within 3 months of child coming into care.
 - The department will immediately establish a Master Trust Account once disability benefits are received.
 - The department will provide a quarterly Master Trust accounting/notice of the child's right to request a waiver.
 - The department will refer the child to APD or other appropriate agency for purposes of ensuring the child is enrolled in the Medicaid waiver program within one month of the child coming into care.
- **Visitation:** The department will facilitate sibling/parental visitation.
- **Education:** The department will ensure the child's educational needs are being met.
 - The department will ensure the child has an updated IEP (if the child has a disability) and a surrogate parent through the school.
- **Medical:** The department will ensure the child's medical needs are being met.
 - The department will ensure all child's prescriptions are current and that the child's medications are continued should the child's placement change.

Adoption

- The department will obtain certified copy of child's birth certificate within 30 days of case plan filing.
- The department will refer the case to the appropriate adoption counselor within 5 days of the filing of the case plan filing.
- If adoptive placement has been identified, the department will complete initial adoptive home study on prospective placement 14 days prior to TPR trial.
- The department will report to the court every 30 what efforts they are making to identify, recruit, process and approve a qualified family for at risk adoption. This should include at a minimum recruitment efforts that are specific to the child, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems. § 39.6011(5).

Another Planned Permanent Living Arrangement (APPLA): Independent Living

- The department will file an Amended Independent Living Case Plan within 14 days of the completion of the Independent Living Assessment.
- The department will refer the child to the appropriate Independent Living Counselor within five days of the filing of the case plan.
- The department will complete an Independent Living Assessment.
- The department will conduct an Independent Living Staffing, giving timely notice to the child, the child's GAL and the child's attorney (if applicable).

Refer to the GAL Independent Living Guidelines & Worksheets for checklists specific to the age of the child.

Permanent Guardianship

- The department counselor will complete the necessary paperwork for relative caregiver funds to be distributed within 5 days of disposition.
- The department counselor will obtain a certified copy of the child's birth certificate, Medicaid card and social security within 30 days of acceptance of Case Plan.

COMPLIANCE/NON-COMPLIANCE BY PARENTS

Parents must be given notice that failure to substantially comply with the case plan may result in termination of parental rights and that any material breach may result in filing for TPR sooner than the stated compliance period. § 39.402(18); § 39.6011(2)(e); *see also § 39.806(1)(e) Fla. Stat. (2007)*. "Substantial compliance" means that the circumstances which caused the creation of the case plan have been significantly remedied to the extent that the well-being and safety of the child will not be endangered by the child's remaining with or being returned to the child's parent. § 39.01(71).

- In determining whether to reunify a family post-adjudication, the court must determine whether the parent has substantially complied with the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child to the home. § 39.522(2).
- Case plan compliance is relevant to the determination of reunification with a parent if a permanency order has been entered placing the child in a permanent guardianship, placed with a fit and willing relative or in an APPLA. §§ 39.621(9), (10).
- Compliance/non-compliance should be documented in the Judicial Review Social Study Report ("JRSSR"). § 39.701(7)(a)2.(requiring documentation of the diligent efforts made by all parties to the case plan); § 39.701(7)(a)5.(mandating that the JRSSR contain a statement regarding the parent's compliance); § 39.701(7)(a)4.(requiring information regarding services provided to the foster family or legal custodian in an effort to address the needs of the child as indicated in the case plan).

- Compliance/non-compliance will be reviewed at all judicial review hearings. § 39.701(8). If the court finds the prevention or reunification efforts of the department will allow the child to remain safely at home or be safely returned to the home, the court shall allow the child to remain in or return to the home *after making a specific finding of fact that the reasons for the creation of the case plan have been remedied to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered.* § 39.701(9)(a) (emphasis added). The court must return a child to his parent's custody any time it determines the parents have substantially complied with the case plan, if the court is satisfied that reunification will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health. § 39.701(9)(b).
- If at any judicial review, the court finds the parents have failed to substantially comply with the case plan to the degree that further reunification efforts are without merit and not in the best interests of the child, the court may order the filing of a petition for termination of parental rights, whether or not the time period for substantial compliance has expired. § 39.701(9)(d).
- Failure of the parents to substantially comply for 12 months after the child is adjudicated or the child's placement into shelter care, whichever came first, constitutes evidence of continuing abuse, neglect, or abandonment unless the failure to substantially comply with the case plan was due either to the lack of financial resources of the parents or to the failure of the department to make reasonable efforts to reunify the parent and child. § 39.806(1)(e)1.
- If the parent materially breaches the case plan by making it unlikely that he or she will be able to substantially comply with the case plan before the time for compliance expires, this can constitute grounds for TPR. § 39.806(1)(e)2.

Other Issues Regarding Case Plan Compliance

Compliance by the department. At the judicial review hearing if the court finds the department has not complied with its obligations in the case plan or in the provision of independent living services as required by law, the court shall issue a show cause order. If cause is shown for failure to comply, the court shall give the department 30 days to comply and, on failure to comply the department may be held in contempt. § 39.701(6)(c); *see also* § 39.701(9)(c) (allowing the court to find the department in contempt, order the department to submit plans for compliance with the case plan, and require the department to show why the child could not safely be returned to the home of the parents if, in the opinion of the court, the department has not complied with its obligations as specified in the written case plan).