Transition Planning with Older Youth: Practical Tools & Legal Requirements

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Nebraska Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans.

We take a systemic approach to address complex issues:
- Poverty
- Affordable Healthcare
- Child Welfare
- Immigration Policy

Advocacy Strategies:
- Impact Litigation
- Policy Advocacy
- Community Education
- Community Organizing

We take our work wherever it does the most good – at the courthouse, at the statehouse, or in our community.
Nebraska Appleseed’s Child Welfare Program

- Systemic reform
- Children’s behavioral health
- Maximizing public benefits programs
- ICWA & issues at the intersection of child welfare and immigration
- Legal Resource Center
- Fostering Connections & older youth in care
Nebraska’s Young Adult Voluntary Services and Support Act (LB 216)

Creates a program of extended services and support to age 21 under the federal Fostering Connections Act

- Passed by the NE Legislature on May 25, 2013, signed into law by the Governor on June 4, 2013
- Youth-led process, with involvement of a broad group of stakeholders
- Program is voluntary and young people can opt in and out
- Court conducts permanency reviews
- Attorney appointed if requested by the young person
- Advisory Committee

For more information, visit: neappleseed/org/children#lb216
Road Map

• Introduction to Transition Planning
• The Need
• Law on Transition Planning
  – Federal Law
  – Case Law
  – State Law
  – New Medicaid Category
• Creating Transition Plans
• Questions and Discussion
Introduction to Transition Planning

• Many youth lack the necessary skills, resources, or guidance to succeed by themselves.
• Transition planning: the process of assisting older youth who are preparing to leave foster care.
• The State is responsible for ensuring that older youth are connected to needed resources.
• A written transition proposal helps identify:
  – What youth need to live independently
  – How they will meet those needs
  – Who will help them along the way
  – What concrete steps they must take
The Need

• Nationally
  – 2010: 27,854 exited to “emancipation”
• In Nebraska
  – 2011: 321 “aged out,” 113 discharged to independent living
• Nebraska attorney survey
  – 72% disagreed that youth “…generally have a written independent living transition proposal”
  – Majority agreed that when transition proposals were done, they did not effectively or comprehensively address each required areas
    • Education, employment, health, finances, housing, relationships, and adult services
Federal Law

• The Independent Living Initiative (1986)
  – Assisted states in establishing and carrying out programs for youth 16+

• The Foster Care Independence Act (FCIA) of 1999
  – Increased federal funding for services to older youth
  – Authorized a broad range of transitional services
    • e.g. basic living skills and room and board payments
  – Authorized Medicaid eligibility for former foster youth up to age 21
Federal Law

• The Fostering Connections Act requires that:
  – A transition plan is developed at least 90 days before youth reaches age of majority
    • Personalized at direction of the youth
  – Transition plan include options for:
    • Housing, health insurance, education, community supports, and employment services
• 42 U.S.C. § 675
  – Case plans for youth age 16+ must include a written description of the programs that can assist the youth transition to independent living
  – Independent living services are discussed at all permanency hearings
  – Youth must be consulted regarding the plan in an age appropriate manner
  – Consumer reports must be provided to youth at age 16 and annually thereafter
Case Law

• Several appellate cases have recognized that independent living services are available and in the best interest of older youth in foster care.
    • Seven youth discharged to independent living were not adequately prepared and were entitled to declaratory, injunctive, and monetary relief from the State of New York
    • New York City was required to assist youth aging out of foster care with housing pursuant to a judicially approved settlement
State Law

• LB 177 (Neb. Rev. Stat. § 43-1311.03)
  – Passed by the Nebraska Legislature in 2011
  – Codifies several key provisions of Fostering Connections
  – Additional provisions:
    • Transition planning starts at 16
    • Proposal must include financial assistance and adult services
    • Transition team must include:
      – Child, caseworker, GAL, individuals selected by child, and others with knowledge of available services
    • Final transition proposal shall address housing
    • DHHS must provide Social Security Card and Birth Certificate
    • Juvenile Court has authority to oversee transition planning process
New Medicaid Category

• Fostering Connections requires transition plans include information about potential “health care insurance” for youth

• Medicaid currently covers:
  – All IV-E eligible youth in foster care
  – Many youth that are not eligible for IV-E
  – Many youth formerly in foster care up to the age of 21

• Sec. 2004 of the Affordable Care Act (2010)
  – Created new category of Medicaid extending eligibility for youth formerly in foster care to age 26
Eligibility

• Generally, youth formerly in foster care will be eligible for Medicaid under this category if they:
  – Are under 26 years of age;
  – Are not otherwise eligible for Medicaid;
  – Were in foster care upon turning 18 (or such higher age as the State has elected); and
  – Were enrolled in Medicaid or a waiver program while in care
    • 42 U.S.C. § 1396a(a)(10)(A)(i)(IX)
CMS Proposed Regulation

• Centers for Medicare & Medicaid Services’ proposed regulations (Jan. 22, 2013):
  – Optional for states to provide this category to youth who aged out of care in another state
  – Youth must be in foster care “either when attaining age 18 or at the point of ‘aging out’ of foster care”
  – No income or resource test for this eligibility group
  – Youth may apply any time between 18 and 26
Eligibility Can Be Affected In Juvenile Court

• If youth is discharged to independent living prior to age 18
  – …they will most likely not be eligible for Medicaid

• If youth does not have Medicaid while in care
  – …they will not be eligible for the new Medicaid category

• If youth is adopted or placed in a guardianship prior to the age of 18
  – …they will not be eligible for the new Medicaid category
The Role of Advocates: ACA

• Advocates should:
  – Provide information to older youth about their current and future health care options
  – Help youth designate a person to make healthcare decisions on their behalf
  – Explain the potential consequences of discharging to independent living when the youth is under age 18
  – Help monitor the status of older youths’ Medicaid eligibility
  – Contact former clients, if possible, to inform them about the new Medicaid category and other healthcare options
Creating Transition Plans

• Before the Plan
  – Preparation
    • Understanding and awareness of adolescent development
    • Throughout the process:
      – Explain concepts
      – Offer thorough overview of available options
      – Empower the youth to direct the process
        » “Do you think this plan will help?” “Is there anything missing?”
        » “What do you like/not like?” “What else do you need?”
Creating Transition Plans

• Before the Plan (continued)
  – Assessment
    • Assesses youth’s needs and developmental abilities
    • Helps gauge what supports and services are needed
      – E.g. Casey Life Skills assessment: caseylifeskills.force.com
Creating Transition Plans

• Before the Plan (continued)
  – Transition Teams
    • Best Practice: include ALL key people (e.g. foster parents, birth parents and other relatives, other supportive adults and peers)
  – Youth Inventory
    • Ensures youth are provided important documents prior to case closure
    • See Nebraska Appleseed’s Youth Inventory
Creating Transition Plans

• Transition plan should address:
  1. Current status
  2. Future goals (short- and long-term)
  3. How to reach goals:
     a. Who will help
     b. Steps to take prior to case closure

See FosterClub’s Transition Toolkit and Nebraska Appleseed’s Transition Proposal Checklist
Transition Plan Components: Fostering Connections

• Housing
  – *A homeless shelter is NOT an option*
  – Before case closure: safe, stable, affordable housing; references/co-signer

• Health Insurance
  – Before case closure: comprehensive screenings; copies of medical records/diagnoses
Transition Plan Components: Fostering Connections

- Education
  - *Not just college!*
  - Before case closure: copies of records; complete applications for FAFSA, ETV, and others

- Community Supports
  - *Includes biological family, supportive adults, and community supports*
  - Before case closure: Permanency Pacts; emergency contacts list
Transition Plan Components: Fostering Connections

• Employment Services
  – Before case closure: resume and sample job application; expunge/seal juvenile records
Additional Transition Plan Components

• Financial Guidance
  – Before case closure: checking/savings accounts; credit history/repair*

• Adult Services
  – Before case closure: apply for relevant services, e.g. SNAP, TANF, SSI/disability income assistance, etc.

• Transportation

• Life skills education
The Role of Advocates: Transition Planning

- Attorneys should:
  - Actively assist youth throughout this process
  - Ensure that the juvenile court, caseworkers, and HHS continue to meet their respective legal requirements

- Attorneys can also:
  - Make sure the transition plan is developed in a timely manner
  - Make sure the transition plan is reviewed at every permanency hearing
  - Bring any non-compliance to the attention of the juvenile court and, if necessary, request a court order to comply with the law
  - Consider requesting an order to show cause and a subsequent motion to hold HHS in contempt for failing to comply with federal/state law
Questions?

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