

NAVIGATE INVESTIGATE ILLUMINATE REFORM

OFFICE OF COLORADO'S
CHILD PROTECTION

INVESTIGATION REPORT CASE 2016-2074



Stephanie Villafuerte
Child Protection Ombudsman
December 13, 2017

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LETTER FROM THE OMBUDSMAN

Dear Citizens and Stakeholders,

Every year we celebrate National Adoption Day in November. On this day, we finalize the adoptions of children and we celebrate the commitment that parents and children make to one another to become forever families. However, the day a child's adoption is finalized marks just one step in their parents' lifelong journey to care for these children.

Many children adopted in Colorado have experienced abuse, neglect, multiple placements and institutionalization. These experiences often cause physical, psychological, emotional and developmental harm which affects children throughout their lives. Colorado has increased its efforts to find more adoptive families for children in need of safe and caring homes. While these efforts are laudable, it is equally important for us to remember that we must also focus our attention and resources on the long-term well-being and stability of these families.

The Office of Colorado's Child Protection Ombudsman launched its investigation of Colorado's adoption assistance program on August 26, 2016. The opportunity to study this complex program comes at a crucial time in our state's history. During the past several years, Colorado has made tremendous efforts to reduce the number of children in the child welfare system who live in long-term congregate care.

Adoption has become an important tool in the efforts to increase the number of permanent and stable homes for Colorado's abused and neglected children.

The number of adoptions completed each year in Colorado has continued to increase. In 2014, 773 adoptions were completed, 803 adoptions were completed in 2015 and 846 adoptions were completed in 2016, according to data provided by the Colorado Department of Human Services.

At the same time, many agencies in Colorado's child welfare system have embraced a new approach to helping children and families. This approach encourages human services agencies to provide holistic services to both a child and their family to ensure the best future for both.

The success of Colorado's adoption assistance program is critical to these efforts. This program is designed to encourage adoption of children with high needs, as well as to support parents in the care and raising of these children. The goal is to create healthy children and healthy families. To break the cycle of intergenerational abuse.

The Office of Colorado's Child Protection Ombudsman is an integral part of Colorado's child protection system. We recognize how important it is to work with all stakeholders to be outcome based and forward focused, as we all consider the best ways to meet the needs of Colorado's children and families.

The goal of this report is to examine the adoption assistance program and issues affecting the delivery of services to families. The recommendations provided in this report are designed to create positive change for everyone touched by this important program.

Sincerely,
Stephanie Villafuerte
Child Protection Ombudsman

AUTHORITY

Introduction

By design, the Office of Colorado's Child Protection Ombudsman (CPO) serves as an independent, neutral problem solver that helps citizens navigate a complex child protection system in an expert and timely manner. The Ombudsman has independent access to child protection records that are not otherwise available to the public. This allows the CPO to objectively review and investigate complaints, deliver recommendations and drive systemic reform through research and education. Through objective study the CPO works to improve the delivery of services to children and families within the child protection system.

Jurisdiction

The CPO receives *"complaints concerning child protection services made by, or on behalf of, a child relating to any action, inaction, or decision of any public agency or any provider that receives public moneys that may adversely affect the safety, permanency, or well-being of a child. The ombudsman may, independently and impartially, investigate and seek resolution of such complaints, which resolution may include, but need not be limited to, referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint."* See C.R.S. 19-3.3-103(1)(a)(I)(A).

Pursuant to C.R.S. 19-3.3-101 to 110, the CPO does not have the authority to:

- Investigate allegations of abuse and/or neglect.
- Interfere or intervene in any criminal or civil court proceeding.
- Review or investigate complaints related to judges, magistrates, attorneys or guardians ad litem.
- Overturn any court order.
- Mandate the reversal of an agency or provider decision.
- Offer legal advice.

Public Disclosure

In meeting its statutory requirements to *"improve accountability and transparency in*

the child protection system and promote better outcomes for children and families involved in the child protection system," as stated in C.R.S. 19-3.3-101(2)(a), the CPO will provide the public and stakeholders any recommendations it makes to an agency or provider. The CPO will do so by publicly releasing its investigation reports.

Impartiality

To maintain its impartiality – and in keeping with statute – the CPO will independently collect information, records and/or documents from an agency or provider when reviewing and/or investigating a complaint. *"In investigating a complaint, the ombudsman shall have the authority to request and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a county department would be entitled to access or receive such information, records, or documents."* See C.R.S. 19-3.3-103(1)(a)(II)(A).

Confidentiality

Pursuant to C.R.S. 19-3.3-103(1)(a)(II)(B), the CPO treats all complaints as confidential, including the *"identities of complainants and individuals from whom information is acquired; except that disclosures may be permitted if the Ombudsman deems it necessary to enable the Ombudsman to perform his/her duties and to support any recommendations resulting from an investigation."*

Further, C.R.S. 19-3.3-103(3) states that *"the Ombudsman, employees of the office, and any persons acting on behalf of the office shall comply with all state and federal confidentiality laws that govern the state department or a county department with respect to the treatment of confidential information or records and the disclosure of such information and records."* These laws include, but are not limited to, the Colorado Children's Code, CAPTA, HIPPA and FERPA.

The CPO will release identifying information to the proper authorities for anyone who makes any statements of credible harm to themselves or to someone else.

EXECUTIVE SUMMARY

Children adopted in Colorado excel on the soccer field. They create masterpieces in art classrooms, they are listed on the honor roll at school and they bring immeasurable joy to the families they make whole. The adoptive parents and countless individuals who work to find children homes have allowed the hundreds of children adopted in Colorado every year an opportunity to thrive. The lives of most of these children, however, will also be forever impacted by the events they experience before they were placed in a home that was safe. Some were exposed to drugs and alcohol in utero. Others were neglected when they came home from the hospital. Many suffered severe emotional and physical abuse at the hands of their biological parents. The Colorado adoption assistance program was designed to encourage families to adopt children with special needs and to ensure those families have the supports necessary to provide safe and caring environments.

The Office of Colorado's Child Protection Ombudsman (CPO) received a complaint on July 29, 2016, alleging statewide disparities in adoption subsidy payments and inconsistencies in practices among county human services departments (county departments). These county departments work directly with families to provide services and benefits available under the adoption assistance program. The issues alleged in the complaint have been raised previously.

More than 15 years ago, Colorado's adoption assistance program was audited. The audit identified several insufficiencies in the program, many of which still exist today. Disparate rates have long dominated the discussion surrounding adoption assistance in Colorado because they are the most tangible element of the program. How a child's needs are determined and predicting what those needs will entail years into the future are parts of the program that are much harder to quantify. They are, however, essential factors in the equation. Through 16 months of research, the CPO has found that disparate adoption subsidy rates represent one of the many symptoms of a long-neglected program.

The CPO's investigation, which was opened on August 26, 2016, examined all sides of the adoption assistance program - from the federal laws that established it, to the families requesting assistance. Extensive collaboration with the Colorado Department of Human Services (CDHS), county departments, non-profit agencies and dozens of adoptive families provided the CPO with unprecedented access and insight into Colorado's program. This report details four areas of the adoption assistance program in need of improvement:

The Law - Omissions in state law and inconsistent interpretations of federal law and state rules have long plagued the foundation of Colorado's program. These laws fail to give families and practitioners adequate guidance on the services and subsidies available under the program. This has resulted in inconsistent policies across the state.

The Operating Structure - Various legal interpretations have resulted in inconsistent practices at the local level, ultimately weakening the operating structure in which county departments administer the program. Without impactful review and support, county departments have independently developed practices to meet the needs of their communities. The unintended consequence of this is a level of inconsistent practice that goes beyond the healthy flexibility county departments need to deliver services and benefits to families in their community. Families across Colorado expressed frustration and confusion concerning the various practices among county departments. This frustration is heightened by the fact there currently is no central location where families may access complete and accurate information about the adoption assistance program.

The Funding - Adoption subsidies and services pose a unique and demanding consideration for county departments' budgets. The high cost of providing for adoptive children's complex needs, the duration of the subsidy and the future unforeseen needs of these children make it challenging to adequately fund the program. The current formula used to allocate funds for the adoption assistance program also appears insufficient in capturing the complete

needs of families utilizing the program. The result is that county departments are forced to weigh the distribution of appropriate adoption subsidies against the fiscal demands of other child welfare programs in their departments.

The Services – While adoption from foster care has become a priority statewide, less attention has been paid to providing adoptive families and children the post-adoption services that are necessary to ensure they can remain in their homes and their families have the services that are required to raise them successfully. Accessing services, especially mental health care, after an adoption is finalized can be difficult. There is a lack of post-adoption services available for children and families in Colorado.

The above issues impact all 59¹ county departments that administer the statewide adoption assistance program. Improving these areas will ensure families across Colorado receive equitable consideration for benefits and services. This study dissected an expansive and complex system. The CPO found many challenges within the system—some that may be resolved in the near future. Others, however, are more complex and will require additional study and analysis by all stakeholders involved in Colorado’s adoption community.

COMPLAINT SUMMARY

On July 29, 2016, the CPO received a written complaint filed on behalf of two statewide agencies that serve adoptive children and families. The complaint detailed statewide concerns about the administration of the adoption assistance program in Colorado. The complaint stated that *“there is no consistency in the manner in which adoption assistance negotiations occur or the rate of the subsidy offered, if any.”*

Specifically, the complaint alleges families across Colorado are experiencing the following:

1. Adoptive families are not provided clear guidance or expectations concerning the negotiation process and therefore cannot meaningfully participate on behalf of their child.
2. Adoptive families are provided incomplete or inaccurate information concerning services that may be covered by adoption assistance.
3. Adoptive families are not provided adequate information explaining how their subsidy amount was determined.

The CPO opened its investigation on August 26, 2016.

¹ There are 59 county human services departments in Colorado providing services to the state’s 64 counties. Five departments provide services for two counties. Those departments are: Grand and Jackson counties; Gunnison and Hinsdale counties; La Plata and San Juan counties; Mineral and Rio Grande counties and Ouray and San Miguel counties.

SCOPE AND METHODOLOGY OF CPO INVESTIGATION

This investigation represents an unprecedented examination of the adoption assistance program in Colorado – both in the breadth of the families and stakeholders who worked with the CPO, and the depth of the analysis. The CPO spent more than a year studying the adoption assistance program across the state. That research included review of hundreds of documents, including federal and state law, Colorado rules and county-specific policies and program materials. While this information formed the foundation of the CPO’s investigation, the CPO also relied upon the experiences and perspectives of adoptive families and stakeholders to guide its research and, ultimately, to help create recommendations for improving Colorado’s adoption assistance program. In writing this report, the CPO was acutely aware that there is no benefit to oversimplifying any aspect of this program or the experiences of anyone involved.

The adoption assistance program impacts adoptions in multiple systems, including families in the public child welfare system, families who adopt through non-profit, private child placement agencies (CPAs) and families who adopt through kinship placements. In fulfilling the charge of the complaint, however, the CPO’s investigation and resulting report remained centered on adoptions from the public child welfare system. It is the CPO’s hope that this report serves as a catalyst for further conversations that will address the unique needs of multiple stakeholder groups within the adoption community.

Below is a summary of the CPO’s method for completing this investigation, a summary of the materials used and the stakeholders the CPO worked with, as well as a description of how this report was written.

CPO Research and Analysis

Colorado’s adoption assistance program is overseen by the Colorado Department of Human Services (CDHS), but each of the state’s 59 county human services departments

administers the program in their community differently. To understand the intricacies of each of the 59 county departments’ programs, the CPO created a survey. (See Appendix A) The survey consisted of 23 questions regarding the adoption assistance program and requested copies of the county departments’ policies (if applicable) and any other documentation the county departments felt was pertinent. The survey was sent to all 59 county departments on April 25, 2017. The CPO received completed surveys from 56 county departments. Of the 56 county departments that responded to the CPO, three indicated that they do not currently have any written policies for their adoption assistance program. In total, county departments submitted hundreds of pages of policies, state-prescribed forms and other information packets.

The CDHS provided the CPO several sets of data and reports. In total, the CPO received the following information from the CDHS:

- Financial data for fiscal years 2014, 2015 and 2016, demonstrating a county-by-county breakdown of the number of adoptions finalized, average adoption subsidy payments (with and without Medicaid Only agreements), number of Medicaid Only Agreements and number of Title IV-E Eligible adoptions.
- Financial data for fiscal years 2015, 2016 and 2017 demonstrating a county-by-county breakdown of foster care subsidy payments.
- Data demonstrating a county-by-county breakdown of active adoption assistance agreements in Colorado.
- Information regarding the award and distribution of Promoting Safe and Stable Families Program funding by the Office of Early Childhood.
- Information memorandums regarding the average annual adoption assistance payments by county departments.
- Colorado Title IV-E Adoption Assistance Monitoring Instrument and Non-Title IV-E Adoption Assistance Monitoring Instrument.
- Adoption Assistance Program Review letters distributed to county departments reviewed in 2016.

- Agendas for voluntary quarterly information meetings between the CDHS and county department staff.
- Nineteen initial decisions by administrative law judges and the corresponding final agency decisions regarding families' appeals of county department subsidy determinations.

The CPO completed an extensive study of the federal and state laws that guide the adoption assistance program, as well as the state rules used by county departments to create their individual program policies. These laws are cited in detail throughout this report. The CPO reviewed the following:

- The Adoption Assistance and Child Welfare Act of 1980, 42 United States Code (U.S.C.) 673
- The United States Department of Health and Human Services Child Welfare Policy Manual
- Colorado Revised Statute (C.R.S.) 26-7-101 to 108
- 12 Code of Colorado Regulations (C.C.R.) 2509-1 to 10 (Throughout this report, this set of regulations is referred to as Volume VII or "state rule.")
- Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit, March 2002. (See Appendix B)

CPO Interviews with Stakeholders

The CPO conducted dozens of interviews with stakeholders during its investigation. The CPO met with representatives from the following agencies:

- The Colorado Department of Human Services
- The Colorado Human Services Directors Association
- Non-profit private agencies that provide services to adoptive families in Colorado

CPO Interviews with Adoptive Families

The CPO interviewed more than two dozen pre-and post-adoption families. Eight of those families filed formal complaints with the CPO. Those cases were handled as individual investigations according to CPO Case Practices and Operating Procedures. The CPO did not

find any violations of child protection policy or law on the part of the county departments in those investigations. These investigations did, however, provide insight into issues that are addressed in this report.

The families that spoke with the CPO worked with county departments of all sizes. Some worked with county departments in rural areas and others in urban centers. Grievances and levels of frustrations varied among the families. Every family that spoke to the CPO described an area of the program they felt could be improved.

The CPO acknowledges that its work, by design, centers on complaints regarding the child protection system. As such, the information received from families during this investigation was of that nature. While the CPO was interested in soliciting information from families with positive experiences, it was beyond the scope of the CPO's resources to complete a statewide survey of the more than 9,000 adoptive families receiving adoption assistance in Colorado.

Writing this Report

The CPO elected not to identify adoptive families, individual county departments or individual stakeholders, such as agency directors or supervisors. This was done intentionally to keep the focus on issues affecting the adoption assistance program as a whole.

How to Read this Report

The CPO issued 14 recommendations as a result of this investigation. These recommendations are located throughout the Findings and Recommendations section of this report, along with any responses from relevant agencies. A chart summarizing the CPO's recommendations and any agency response is available on page 10.

Throughout this report, the terms "adoption assistance program," "adoption subsidies" and "adoption services" will be used.

- **"Adoption assistance program"** denotes the statewide program as it is administered at the county level.
- **"Adoption subsidies"** refers exclusively to monthly cash payments awarded

to adoptive children and families by county departments.

- **“Adoption services”** denotes other benefits a family may receive as part of an adoption assistance agreement, such as a Medicaid Only subsidy, a non-recurring payment or respite care.

OVERVIEW OF COLORADO’S ADOPTION ASSISTANCE PROGRAM

Introduction

When a child is abused or neglected, child welfare services may remove that child from their home and place them in foster care. While systems work to safely reunite the child with their family, there are times when these efforts fail and the child needs a safe and permanent home. However, the ability of the child welfare system to find suitable adoptive homes is often complicated by the fact that these children are victims of abuse and neglect who have extensive medical and emotional needs requiring constant and costly care often throughout their lifetimes.

History of the Federal Adoption Assistance Program

In 1980, the federal government passed the Adoption Assistance and Child Welfare Act (Act) to encourage the adoption of children from the foster care system.² This law was created in direct response to the growing number of children who languish in foster care.

Prior to the Act’s passage, few states reimbursed families for the costs of adoption and the raising of a special needs child. As such, the primary way that families could afford to care for these children was to continue to serve as foster parents and receive reimbursement. The lack of policies in this area inadvertently served as a disincentive for low to moderate income families who wanted to adopt but were unable to afford the high costs of providing care. The underlying purpose of the Act is to provide incentives for families of any economic status to adopt special needs children.³

The federal legislation provides financial incentives to states to maintain adoption assistance programs by partially reimbursing them for the costs of providing certain benefits

² 42 U.S.C. 673

³ Elizabeth Oppenheim, Alice Bussiere, Ellen C. Segal, *Adoption Assistance for Children with Special Needs*, ADOPTION LAW AND PRACTICE 9.01(2), 2000

and services to families. All states, including Colorado, have adoption assistance programs. Since the Act's passage, thousands of children have been adopted, children who otherwise might have remained in foster care.⁴

Multiple benefits are available under this program, including a monthly adoption subsidy (cash assistance), non-recurring adoption expenses and Medicaid. Additionally, "case services" may be available for special equipment, speech, occupational and physical therapies, and other mental health services if those services are not covered by the cash assistance benefit or Medicaid agreement.⁵

The adoption assistance program has helped thousands of children access services that are critical to their health and well-being. As of September 2017, 9,851 children in Colorado were receiving some form of adoption assistance.⁶

The Subsidy Program

When a family decides to adopt a child, they may request an adoption subsidy (cash assistance) and other services to meet their adoptive child's needs. There are two types of adoption subsidies in Colorado: Title IV-E (comprised of federal, state and county funds) and Non-Title IV-E (comprised of state and county funds).⁷

In Colorado, children adopted through the child welfare system or through private non-profit adoption agencies may be eligible for adoption assistance. In Colorado, the Title IV-E program provides the greatest number of adoption subsidies for children. This program creates a partnership between the federal and state government that subsidizes adoptions

of children who satisfy specific eligibility and categorical criteria.⁸

Eligibility criteria are complex and evolving.⁹ However, one significant eligibility determinant is whether the child has "special needs." This term is defined differently in each state, but in Colorado the definition includes: older youth, membership in a sibling group, physical disability, cognitive disability, emotional disability, learning disability and membership in a minority group.¹⁰ Essentially, special needs are defined broadly to include characteristics that would make the child's adoption more difficult.

The amount of cash assistance a child is eligible for is determined by considering the "circumstances of the adoptive parent" and the "needs of the child."¹¹ The use of a means test is prohibited in negotiating an adoption assistance agreement and therefore it is impermissible to base the subsidy amount solely on the income and assets of the adoptive family.¹² The payment may not exceed the amount the child received in foster care.¹³ Typically, families negotiate with human services agencies before the adoption is finalized, to determine the subsidy amount the child will receive, if any.

Federal law intends for the parties to negotiate the amount of the subsidy, to ensure that the unique needs of every child are considered and that no need is discounted solely upon the basis of a predetermined subsidy rate.

For nearly three decades, national researchers have questioned the fairness of the adoption assistance negotiation process and whether it is the most effective means of ensuring that children with comparable special needs are

⁴ Mary Eschelbach Hansen, Distribution of Federal Entitlement: The Case of Adoption Assistance, *The Journal of Socio Econ.* December 1, 2008

⁵ Volume VII, 7.306.52

⁶ Data provided by CDHS on September 26, 2017

⁷ This is a county/state subsidy program for children whose biological parents' income exceed federal limits, but whose children still qualify as having special needs.

⁸ 42 U.S.C. 673 (a)(1)(2); Elizabeth Oppenheim et al., *Adoption Assistance for Children with Special Needs*, ADOPTION LAW AND PRACTICE 9.01(2), 2000.

⁹ As of October 1, 2017, the eligibility for Title IV-E adoption assistance is no longer related to a child's biological parent's eligibility for Aid to Families with Dependent Children (AFDC). This will increase the number of Colorado children eligible for a Title IV-E adoption subsidy. See ACF information memorandum ACYF-C13-IM-05, issued September 28, 2017.

¹⁰ Volume VII 7.306.4

¹¹ 42 U.S.C. 673(a)(3)

¹² ACYF-CB-PA-01-01 (U.S. Department of Health and Human Services) (1/23/01)

¹³ 42 U.S.C. 673(a)(3)

being treated similarly.¹⁴ While the debate on this issue continues, the negotiation process remains a critical element of the federal law and as such guides Colorado practice.

Once a subsidy has been awarded, it is memorialized into a formal adoption assistance agreement. This agreement is legally binding upon the parties.¹⁵ Federal law permits the subsidy to be readjusted periodically if there are changes in circumstances and with the *concurrence* of the adoptive family.¹⁶ In Colorado, these agreements are reviewed every three years from the date of the initial agreement.¹⁷

Adoption subsidies terminate when a child turns 18, but, in some cases, the subsidy continues until the child turns 21, if the state determines that the child has a mental or physical handicap which warrants continued assistance.¹⁸ Subsidies can be discontinued if the state determines that the parents are no longer legally responsible for the support or care of the child or if the state determines that the child is no longer receiving any support from the parents.¹⁹

Adoptive parents who disagree with an agency's decision to award a specific subsidy amount, to deny a subsidy, reduce the subsidy or terminate benefits have the right to appeal the agency's decision through the administrative hearing process.²⁰

Adoption assistance is administered at the state and local levels. The CDHS is responsible for providing guidance and assistance to the state's 59 county departments, as well as ensuring the departments are in compliance with the rules and laws that define the program. County departments work directly with adoptive families to determine eligibility for the program, negotiate the adoption subsidy and/or services, finalize the adoption

assistance agreements and review those agreements on a scheduled, routine basis. Additionally, the county departments are responsible for making payments to the families, as the funds for the adoption assistance program are distributed to the county departments annually.

In Colorado, most adoption assistance falls into one of the following four categories:

1. Monthly Subsidies (Cash Assistance) -

Monthly cash payments based *upon the circumstances of the adoptive family and the needs of the child.*²¹ These payments may be made for the duration of the assistance agreement or during a set time period.

2. Dormant or Medicaid Only -

No monthly subsidy payment is provided to the child. The county department documents the child's special needs and notes the possibility that financial assistance may be needed in the future. The child is provided Medicaid.

3. Non-Recurring Expenses -

The federal government reimburses states for one-time costs that are associated with facilitating the adoption process. These costs include adoption fees, home studies and attorney costs. Federal law will reimburse up to \$2,000 per child for these purposes. States are allowed flexibility in setting these rates to account for the differences in costs among various states and localities. The majority of county departments limit these funds to \$800 per child.

4. Case Services -

A type of service provided to meet a child's special needs that are identified at the time of the child's adoption, but are not covered by the adoption subsidy or Medicaid.

¹⁴ Mary Eschelbach Hansen, Daniel Pollack, Unintended Consequences of Bargaining for Adoption Assistance Payments, FAMILY COURT REVIEW, Vol. 43, No. 3, July 2005 494-510.

¹⁵ 42 U.S.C. 673 (a)

¹⁶ 42 U.S.C. 673(a)(3)

¹⁷ Volume VII, 7.306.401(E)

¹⁸ 42 U.S.C. 673(a)(4)

¹⁹ 42 U.S.C. 673(a)(4)

²⁰ 42 U.S.C. 671(a)(12)

²¹ Volume VII 7.306.42(D)(4)

FINDINGS AND RECOMMENDATIONS

Recommendation Locator

Recommendation 1	ID: 2016-2074-F1(R1)	Agency Addressed:	Agency Response:
	Page No. 16	Colorado General Assembly	Not Applicable

Recommendation: The Colorado General Assembly and stakeholders should work together to revise C.R.S. 26-7-101 to 108, to incorporate relevant federal language to provide clear guidance for entities administering the adoption assistance program.

Recommendation 2	ID: 2016-2074-F1(R2)	Agency Addressed:	Agency Response:
	Page No. 16	CDHS – Division of Child Welfare	Agree

Recommendation: Work with stakeholders to amend Volume VII to:

- a. Ensure Volume VII accurately reflects federal and state law regarding the adoption assistance program.
- b. Ensure county departments' policies accurately interpret federal and Colorado legal standards regarding the adoption assistance program.

Recommendation 3	ID: 2016-2074-F2(R1)	Agency Addressed:	Agency Response:
	Page No. 20	CDHS – Division of Child Welfare	Agree

Recommendation: Develop uniform descriptions of the types of services and subsidies offered under the adoption assistance programs to be used by county departments in their policies.

Recommendation 4	ID: 2016-2074-F2(R2)	Agency Addressed:	Agency Response:
	Page No. 20	CDHS – Division of Child Welfare	Agree

Recommendation: Develop uniform guidance and/or rules to help guide practices during negotiations. The uniform guidance and/or rules should include the following elements:

- a. An explanation of the difference between the benefits and monthly subsidy rates available when the child is in foster care, compared to the benefits and rates available after the child is adopted.
- b. Clear guidance regarding who is allowed to participate in adoption assistance negotiations with county departments.
- c. An explanation of how county departments determine and communicate initial subsidy offers during adoption assistance negotiations.
- d. A "script" county departments and families may use as a resource during adoption assistance negotiations. This "script" will detail eligibility factors, the purpose of the subsidy, what issues will be discussed, services available, the role of Medicaid and future review and possible re-determination of subsidy amounts.

Recommendation**5**

ID: 2016-2074-F2(R3)

Agency Addressed:

Agency Response:

Page No. 23

CDHS - Division of
Child Welfare**Agree**

Recommendation: Study and evaluate the use of predetermined maximum subsidy amounts in Colorado using existing department resources. This study should include:

- a. Whether the setting of predetermined maximum subsidy amounts is consistent with the original intent of the federal adoption assistance program, which is designed to encourage the adoption of special needs children from the child welfare system. The results of this study should be made public and reported to the General Assembly.

Recommendation**6**

ID: 2016-2074-F2(R4)

Agency Addressed:

Agency Response:

Page No. 23

CDHS - Division of
Child Welfare**Agree**

Recommendation: If predetermined maximum subsidy amounts prove to be best practice, then the Colorado Department of Human Services' Division of Child Welfare should use existing department resources to study:

- a. Which method for setting predetermined maximum subsidy amounts best ensures that subsidy amounts support the long-term well-being and stability of adoptive children. The results of this study should be made public and reported to the General Assembly.

Recommendation**7**

ID: 2016-2074-F2(R5)

Agency Addressed:

Agency Response:

Page No. 27

CDHS - Division of
Child Welfare**Partially Agree**

Recommendation: Improve the monitoring program so it may provide more impactful direction to county departments. To do this, the Colorado Department of Human Services' Division of Child Welfare should:

- a. Include the perspective of adoptive families in the monitoring program.
- b. Deepen the program's analysis of **how** adoptive parents experience the adoption assistance program and **how** services and subsidies provided to children impact their long-term well-being and stability.
- c. Consider obtaining additional staff for the purpose of completing more substantive and consistent review of county departments' adoption assistance programs.

Recommendation**8**

ID: 2016-2074-F2(R6)

Agency Addressed:

Agency Response:

Page No. 28

CDHS - Division of
Child Welfare**Partially Agree**

Recommendation: Create training opportunities at the Colorado Child Welfare Training Academy, at each regional center, as well as on-site training opportunities in rural communities to ensure all relevant county department staff have equal access to training regarding the adoption assistance program. Any training curriculum should specifically address:

- a. The law and rules guiding the adoption assistance program.
- b. Access to adoption-informed training to ensure that the children and families are receiving the services that are most appropriate for their needs.

Recommendation

9

ID: 2016-2074-F2(R7)

Agency Addressed:

Agency Response:

Page No. 29

CDHS – Division of
Child Welfare

Agree

Recommendation: Complete an inventory of state-prescribed forms and ensure county departments are provided the most up-to-date forms.

Recommendation

10

ID: 2016-2074-F2(R8)

Agency Addressed:

Agency Response:

Page No. 30

CDHS – Division of
Child Welfare

Agree

Recommendation: Create an easily accessible portal on its website that contains information about the adoption assistance program. This portal should include:

- a. The most recent versions of all county departments' policies regarding their adoption assistance program.
- b. Information about the adoption assistance program, including eligibility, details about the services and benefits available under the program, the duration of these services and benefits and children and families' rights.
- c. Direct access to Colorado Revised Statute and Volume VII regarding adoption assistance.
- d. Information on the availability of reimbursement for non-recurring expenses.
- e. Information on the availability of mental health services.
- f. Information on the availability of the federal adoption tax credit.
- g. Revise and post the adoption assistance handbook, which should be updated annually.
- h. Contact information for the Adoption Program and Colorado ICAMA Administrator should be available on the same page as information about the adoption assistance program.

Recommendation

11

ID: 2016-2074-F3(R1)

Agency Addressed:

Agency Response:

Page No. 33

CDHS – Division of
Child Welfare

Agree

Recommendation: Track the **total** expenditures – including the cost of monthly subsidies and other services – at the state and county level for administering the adoption assistance program. It is vital to understand the total expense of administering the adoption assistance program to determine what gaps or opportunities exist for improving the long-term well-being and stability of children through service delivery.

Recommendation

12

ID: 2016-2074-F3(R2)

Agency Addressed:

Agency Response:

Page No. 33

CDHS – Division of
Child Welfare

Agree

Recommendation: Using existing department resources, study alternative methods of funding the adoption assistance program. The goal of this study should be:

- a. To decrease the variance of subsidy benefits across county departments.
- b. To explore alternative mechanisms that will enhance county departments' ability to support adoptive children and their families.

Recommendation**13**

ID: 2016-2074-F4(R1)

Agency Addressed: Agency Response:

Page No. 36

CDHS - Division of
Child Welfare**Agree**

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare complete a statewide inventory of adoption-informed resources. This information should be used to create a strategic plan that will help connect families with post-adoption resources in every part of the state. This strategic plan should be made public and reported to the Colorado General Assembly.

Recommendation**14**

ID: 2016-2074-F4(R2)

Agency Addressed: Agency Response:

Page No. 37

CDHS - Division of
Child Welfare**Partially Agree**

Recommendation: Coordinate with the Colorado Department of Health Care Policy and Financing to:

- a. Identify the obstacles and barriers preventing adoptive parents from obtaining adoption-competent therapies and other treatments for their children.
- b. Study the rate at which adoptive children are accessing Medicaid services after finalizing their adoption.
- c. Study what services are being supplied by Medicaid providers to adoptive children and whether these services are meeting their specific needs.
- d. Make these findings public and report them to the Colorado General Assembly.

The Law

INTRODUCTION

The Adoption Assistance and Child Welfare Act of 1980 provides the legal framework for the administration of the Colorado adoption assistance program. States are provided guidance from the United States Department of Health and Human Services' Child Welfare Policy Manual regarding how to interpret the law.

Federal law provides standards and guidance that are not always reflected in the rules administered by CDHS, state law or the policies of county departments. The result is that the subsidies given to children are based upon differing understandings of the law by county departments, a circumstance that may inadvertently restrict the type of assistance given.

In Colorado, the adoption assistance program is governed by three bodies of law and rule.²² The current legal guidance is insufficient – both in state law and rule. This has resulted in inconsistent interpretations of the law by county departments which, ultimately, results in county departments using different standards to determine what subsidies and services are provided to children. These inconsistencies are reflected in the 53 county department policies submitted to the CPO. Currently, neither state law nor rule require county departments, nor the CDHS, to routinely review whether written policies accurately reflect federal guidelines, as well as state law and rule.

INCONSISTENCY IN LEGAL STANDARDS AND INTERPRETATIONS

Colorado's law regarding the adoption assistance program does not include standards contained in federal law or guidance.

Specifically, state law and rules lack standards and definitions for the following criteria,

which county departments use to determine adoption subsidies:

- Determining the needs of a child
- Circumstances of the family
- The future needs of the child

Determining the Needs of the Child

In Colorado, there is a wide variety of interpretations on how to define the "needs of the child." Understanding a child's needs plays a crucial role in determining a child's eligibility for, and the amount of, a Title IV-E subsidy.

Federal law states that the amount of the adoption subsidy *"shall be determined through agreement between the adoptive parents and the State or local agency administering the program."* Federal law requires that in determining the subsidy amount that two factors must be considered: *"The **circumstances of the adopting parents and the needs of the child being adopted.**"* [Emphasis added]²³

Each of these terms is defined in greater detail within federal law and guidance which states that, *"The payment agreed upon should combine with the parents' resources to cover the **ordinary and special needs of the child projected over an extended period of time and should cover anticipated needs, e.g. child care.**"* [Emphasis added] *Anticipation and discussion of these needs are part of the negotiation of the amount of the adoption assistance payment.*²⁴

Colorado state law arguably provides for both the "routine"²⁵ and "special needs"²⁶ of a child by stating, *"payments may include but are not limited to the maintenance costs, medical and surgical expenses, and other costs incidental to the adoption, care, training, and education of the child."*²⁷ While Colorado law implies the subsidy is for both "ordinary needs" and "special needs,"

²² The three bodies of law and rule are: 42 U.S.C. 673, C.R.S. 26-7-101 to 108 and 12 Code of C.C.R. 2509-1 to 10.

²³ 42 U.S.C. 673(a)(3)

²⁴ ACYF-CB-PA-01-01 (U.S. Department of Health and Human Services) (1/23/01)

²⁵ C.R.S. 26-7-104(1)

²⁶ C.R.S. 26-7-101 defines "special needs" as a "child with a special, unusual, or significant physical or mental disability, or emotional disturbance, or such other condition which acts as a serious barrier to the child's adoption."

²⁷ C.R.S. 26-7-104(1)

it fails to explicitly state this. This is one of two crucial factors used to determine the subsidy amount that may be available to adopted children and their families.

State rules are also inconsistent in their interpretation of what constitutes “the needs of a child.” In one instance, Volume VII states, *“The county shall base the negotiation on the **special needs**²⁸ of the child and the circumstances of the adoptive parent.”* In a different section, the rules implicitly provide for both “ordinary needs” and “special needs” by stating, *“Adoption assistance is intended to help remove financial or other barriers to the adoption of Colorado children with **special needs** by providing assistance to the parent(s) in **caring for and raising of the child.**”*²⁹

These inconsistent definitions have an impact on the administration of the program. In Colorado adoption assistance is often mischaracterized in county departments’ policies as being **solely for children with “special needs” at the time of their adoption.** More than half of the county department policies reviewed by the CPO include language inconsistent with the federal requirement that a child’s **“ordinary needs” and “special needs”** be considered **“over an extended period of time.”**

The ambiguity of these rules has created a statewide system that largely administers adoption assistance based solely upon the “special needs” of the child, using the narrow definitions provided in state law and rule. The result creates a conflict between administering agencies and families on precisely the purpose of the adoption subsidy and what it should cover.

This conflict in statutory interpretation has caused adoptive parents to appeal county departments’ subsidy determinations,

claiming that the subsidy offered by the county department did not contemplate both their adoptive child’s “ordinary needs” and “special needs.”³⁰ In some instances, administrative law judges (ALJs) who preside over these cases, have noted the inconsistencies between these three bodies of law.

Circumstances of the Family

As stated previously, under the federal adoption assistance program, the “circumstances of the adopting parents” must be considered together with the “needs of the child” when negotiating the adoption assistance agreement.³¹

The federal government has broadly interpreted “family circumstance” to pertain to *“the adopting family’s capacity to incorporate the child into their household in relation to their lifestyle, standards of living and future plans, as well as their overall capacity to meet the immediate and future needs (including educational) of the child. This means considering the overall ability of the family to incorporate an individual child into their household.”*³²

Colorado law, however, does not define “family circumstances” nor provide guidance on how “family circumstances” shall be considered in the determination of the adoption subsidy.

While Volume VII instructs county departments to consider “family circumstances,” it provides no definition or guidance on how this relates to the determination of the amount of an adoption subsidy. How “family circumstances” are considered varies between county departments. Of the 53 county department policies reviewed by the CPO, seven did not list “family circumstances” as one of the criteria that must be considered. Other county departments did acknowledge

²⁸ Volume VII 7.306.4(3)(d) Under Volume VII, a child has a special need if they experience one or more of the following factors as a barrier to their adoption: physical disability, mental disability, developmental disability, educational disability, emotional disability, hereditary factors, high risk children, other conditions or ethnic background.

²⁹ Volume VII 7.306.4(A)(3)

³⁰ The CPO was provided 19 initial decisions issued by ALJs during 2005, 2013, 2014, 2015 and 2016. Six of those cases involved appeals in which families argued their child’s needs were not properly considered by county departments.

³¹ 42 U.S.C. 673(a)(3)

³² ACYF-CB-PA-01-01 (U.S. Department of Health and Human Services) (1/23/01)

the necessity of examining “family circumstances.” Some of these county departments provided various tools or worksheets to document a family’s resources to determine whether a subsidy is required to help the family meet the needs of the child. During its review, the CPO was unable to identify a tool that county departments use consistently to calculate a family’s resources.

The ambiguity in law and the various processes used to obtain this information is the source of frustration for families. The varying methods used by county departments was particularly confusing for families who adopted children from multiple departments. Additionally, families reported that they were not provided clear explanations of how their circumstances potentially increased or decreased the amount of the subsidy provided to their child.

Future Needs

The federal government has provided states with guidance regarding whether adoption subsidies may be used to cover a child’s “future needs.” Specifically, the guidance states that agencies should consider the, “ordinary and special needs of the child projected over an extended period of time and should cover anticipated needs, e.g. child care.”³³ Colorado law omits this critical federal guidance and as such unfairly limits the period of time and type of benefit a child may receive.³⁴

Consideration of a child’s future needs is also not reflected in Volume VII. Nearly half of the county department policies submitted to the CPO include language that contradicts federal language in this area. Some county department policies consistently state that adoption assistance is intended solely for the “special needs” of the child and not the “routine expenses associated with the raising of the child.”

Recommendation

1

Recommendation: The Colorado General Assembly and stakeholders should work together to revise C.R.S. 26-7-101 to 108, to incorporate relevant federal language to provide clear guidance for entities administering the adoption assistance program.

Recommendation

2

Recommendation: The CPO recommends the Colorado Department of Human Services’ Division of Child Welfare work with stakeholders to amend Volume VII to:

- a. Ensure Volume VII accurately reflects federal and state law regarding the adoption assistance program.
- b. Ensure county departments’ policies accurately interpret federal and Colorado legal standards regarding the adoption assistance program.

CDHS-DCW Response: AGREE “The Department agrees to work with stakeholders, county departments, and the State Board of Human Services to review and make modifications to the Code of Colorado Regulations to more clearly reflect federal and state law expectations regarding the adoption assistance program. The Department also agrees to ensure county departments’ policies accurately interpret federal and state standards regarding the adoption assistance program. The Department currently reviews specific adoption assistance cases, at a minimum, every 3-years. The Department will modify this process to include review of county departments’ policies.”

³³ ACYF-CB-PA-01-01 (U.S. Department of Health and Human Services) (1/23/01)

³⁴ C.R.S. 26-7-104(1)

The Operating Structure

INTRODUCTION

Inconsistent interpretation of federal regulations, combined with insufficient guidance from state law and rule, has essentially weakened the state's ability to create a strong framework for supporting county departments in administering the adoption assistance program. Colorado is, by design, a local-control state. Responsibility and authority for administering child welfare programs are largely dispersed to the 59 county departments. Understanding the unique needs of residents, and available resources in their community, enables these departments to provide tailored services to families and children. By law, county departments are entitled to the flexibility necessary to ensure their adoption assistance program is responsive to the needs of adoptive families in their areas. While ensuring departments maintain flexibility is crucial, it is equally important that every family in Colorado have equal opportunities to access services provided under the adoption assistance program.

The CPO has identified five areas of concern within the current operating structure:

1. Inconsistencies in policy and practice
2. Inconsistency in the assessment of a child's needs and the determination of subsidies
3. Lack of meaningful program evaluation and support
4. Lack of training and support
5. Inadequate and inconsistent information being provided to adoptive families

The CDHS develops statewide procedures, policies and regulations that create a framework for county departments to operate within, and to ensure compliance with law and rule.³⁵ These procedures, policies and regulations are not designed to limit or control the discretion of county departments. Rather, they should serve as framework to ensure adoptive families have equal opportunities to access services, and county departments have clear guidance and reliable support in administering such services. Currently, there is no required or standardized

training for county department staff who negotiate adoption subsidies with families.

INCONSISTENCIES IN POLICY AND PRACTICE

The current operating structure does not provide the necessary guidance or support that is needed to oversee this statewide program. This has resulted in outdated policies, inconsistent access to services and frustration on the part of families and stakeholders.

Specifically, the CPO found:

1. County departments use varying names to describe services and benefits available under the adoption assistance program. In some instances, these services also differ in content.
2. There are inconsistent practices and policies for conducting adoption assistance negotiations.

Types of Available Adoption Assistance

Volume VII states that county departments are authorized to offer the following types of adoption assistance agreements:

- **Long-Term Adoption Assistance Agreements** – "... to partially meet a child's daily needs on an indefinite basis. A long-term agreement is made when the family's financial situation precludes adoption and is unlikely to change or when a child's needs take an excessive toll on the family's financial and emotional resources. This sort of monthly payment may continue until the family's or child's circumstances change, or the agreement terminates as outlined in Termination of Adoption Assistance, Section 7.306.59, of the Adoption Assistance agreement rules."³⁶
- **Time-Limited Adoption Assistance Agreements** – "... to partially meet the everyday needs of the child for a specified period. These are start-up costs for those things that children placed for adoption do not always have, such as sufficient clothing. Agreement partially covers unmet needs that are time limited and non-renewable."³⁷

³⁵ Per information the CDHS provided the CPO on July 31, 2017.

³⁶ Volume VII 7.306.4(A)(3)(h)(1)

³⁷ Volume VII 7.306.4(A)(3)(h)(2)

- **Dormant or Medicaid Only Adoption Assistance Agreement** – *“... there is no adoption assistance payment provided at this time. County departments shall document special needs for the child in the services record and in the State Department’s automated system that the potential need for financial adoption assistance exists and may need to be activated at a future time.”*³⁸
- **Non-Recurring Adoption Expenses** – *“Reimbursement for the following non-recurring adoption expenses, not to exceed \$800 per child, is available to parents adopting children with special needs: (1) Legal fees (2) Adoption fees (3) Other expenses related to the legal adoption of the child(ren).”*³⁹
- **Case Services Payments** – *“Case services are a type of purchased program service that support a case plan for children in out-of-home placement or an adoption assistance agreement. Case services are provided to meet a child’s special needs identified when the child is placed for adoption and which are not covered by the adoption assistance or Medicaid assistance agreements.”*⁴⁰

County departments across the state use a variety of terms to describe these services. In addition to the titles stated above, here is a list of some of the different terms used to describe these services: “Maintenance,” “Provisional Services,” “Medical Subsidy,” “Professional Service Allowance,” “Private Insurance,” “Cash Assistance (lump sum and monthly cash payment),” “Deferred Agreement” and “Ongoing Financial.” The CPO recognizes that state-prescribed forms – which all adoptive families must sign – include a consistent list of services. However, many county department policies differ from information presented in these forms, and, often, families are not presented these forms until the day their adoption is finalized.

Similar categories of service not only vary in name, but vary in what services they provide to families. For example, Volume VII states that Non-Recurring Adoption Assistance Fees may not exceed \$800 per child and are available to cover legal and adoption fees, as well as other expenses. In administering this service, however, some county departments’ policies state that the department will not cover legal or adoption fees, such as filing fees or birth certificates. Other county departments state they will reimburse families for all of the above costs, as well as transportation costs for families completing their adoptions.

A second example of this issue is whether county departments consider respite and daycare as services available to families under the adoption assistance program. Families and stakeholders reported to the CPO that access to respite care may be vital in supporting adoptive families after finalization of their child’s adoption. Respite and daycare services may become a crucial service for a child whose needs change – including mental health or emotional disturbances – years after an adoption is finalized. The CPO found that 32 percent of the county department policies contained varying language about whether respite and day care services will be provided after an adoption is finalized. At least five departments indicated that respite care is not available under the adoption assistance program – contradicting the rule in Volume VII that states both respite and daycare services are available for children who qualify for a Title IV-E subsidy.⁴¹ The remaining county departments address respite and daycare services in their policies, however, they include various criteria for accessing these services. Some examples include:

“Respite – This is for time limited stays away from the home to help the family regroup. The reason for the respite must be directly related to the child’s special needs that were identified prior to the adoption... Day Care – This is only available for IV-E eligible children.

³⁸ Volume VII 7.306.4(A)(3)(h)(3)

³⁹ Volume VII 7.306.53

⁴⁰ Volume VII 7.306.52

⁴¹ Volume VII 7.306.52(D)(1) and Volume VII 7.306.52(D)(2)

Families will be referred for day care services through Title XX.”

“Respite care may be available for critical or urgent needs and the Department may request that the family and/or child be in therapy in order to access respite care.”

Families who worked with multiple county departments to complete adoption assistance agreements for their children, expressed frustration with the various descriptions of services and the lack of consistency between county departments.

Negotiation Practices

The amount of an adoption subsidy or services that a family receives is subject to bargaining between the adoptive family and the county department. National debate has consistently centered on whether negotiations represent the most equitable way for families to access subsidies and services.⁴²

This national debate is mirrored in negotiation practices in county departments across Colorado. Families reported two main areas of frustration with the negotiation process. The first centered on who is allowed to participate in and support the family through the negotiation process (also described as the “subsidy meeting”). For example, some county departments welcome anyone to the negotiation meeting the family wants present. Others do not allow a family’s attorney, guardians ad litem⁴³ or other professionals, such as CPA employees, according to stakeholders and the surveys submitted to the CPO.

Second, families are not provided consistent information about what to expect during negotiations and, as a result, reported feeling confused and unprepared to advocate for their children. One issue families repeatedly brought to the CPO’s attention was the dramatic decrease in the

monthly assistance rates children receive while in foster care compared to adoption.⁴⁴ The majority of county department polices accurately reflect the federal standard that the child’s adoption subsidy cannot exceed the monthly rate the family received while the child was in foster care. However, some families reported to the CPO that while they understood that was the case, they did not anticipate and were not prepared for the rate to dramatically decrease or to be eliminated completely.

According to the county department surveys and family accounts, several county departments prepare an initial offer for families. In such instances, these offers are communicated to families through email, the U.S. Postal Service or are presented first thing at the negotiation meeting. These offers often cause alarm among families, who had expected all the negotiations to take place at the meeting with the county department. Many families also told the CPO that they expected the negotiations to begin at the amount of the child’s foster care rate and work down. Several families expressed frustration when the county departments presented an initial subsidy offer that was half of the child’s foster care rate or, in several cases, a Medicaid Only subsidy.

Financial data provided by the CDHS indicates that during 2016, the average adoption subsidy amount awarded to children was an estimated 56 percent lower than the average foster care rate children received during the same year.

Additionally, both families and county departments described the uncomfortable position adoption assistance negotiations place them in. The two parties, who spend months working together to ensure the well-being and permanency of a child, can find themselves in conflicting positions when determining adoption subsidies and services.

⁴² Mary Eschelbach Hansen et al., Unintended Consequences of Bargaining for Adoption Assistance Payments, FAMILY COURT REVIEW, Vol. 43, No. 3, July 2005 494-510.

⁴³ In Colorado, a guardian ad litem is an attorney who provides best interest legal representation for children in dependency and neglect proceedings.

⁴⁴ Foster parents receive a monthly reimbursement to offset the cost of providing, food, shelter, clothing and other related expenses.

Recommendation

3

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare develop uniform descriptions of the types of services and subsidies offered under the adoption assistance programs to be used by county departments in their policies.

CDHS-DCW Response: AGREE "The Department agrees to develop uniform descriptions of the types of services and assistance offered under the adoption assistance program to be used by county departments in their policies. The Department will update the "Colorado Adoption Assistance Guide" to include, but not limited to, the following descriptions: Long-Term, Time-Limited, Dormant (Medicaid only), Non-Recurring Funds, and Case Services."

Recommendation

4

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare develop uniform guidance and/or rules to help guide practices during negotiations. The uniform guidance and/or rules should include the following elements:

- a. An explanation of the difference between the benefits and monthly subsidy rates available when the child is in foster care, compared to the benefits and rates available after the child is adopted.
- b. Clear guidance regarding who is allowed to participate in adoption assistance negotiations with county departments.
- c. An explanation of how county departments determine and communicate initial subsidy offers during adoption assistance negotiations.
- d. A "script" county departments and families may use as a resource during adoption assistance negotiations. This "script" will detail eligibility factors, the purpose of the subsidy, what issues will be discussed, services available, the role of Medicaid and future review and possible re-determination of subsidy amounts.

CDHS-DCW Response: AGREE "The Department agrees to Recommendation No. 4. The Department agrees to develop uniform guidance to improve consistency in practices during adoption assistance negotiations. The guidance and/or rules will support adoptive parents and county departments in the negotiation process. This guidance and/or rules will include:

- a. An explanation of the difference between the benefits and monthly assistance rates available when the child is in foster care, compared to the benefits and rates available after the child is adopted;
- b. Clear guidance regarding who is allowed to participate in adoption assistance negotiations with county departments;
- c. Examples of how county departments determine and communicate initial subsidy offers during adoption assistance negotiations; and

d. Examples of “scripts” county departments and families may use during adoption assistance negotiations. This “script” will detail eligibility factors, the purpose of the subsidy, what issues will be discussed, services available, future review and possible re-determination of subsidy amounts.

In Colorado’s state supervised/county administered child welfare system, county departments maintain the statutory authority to negotiate both foster care rates and adoption assistance. As stated in the response to Recommendation No. 2, the Department will incorporate a review of the county departments’ policies, including the county departments’ methodology for determining rates. Likewise, policy making in Colorado’s state supervised/county administered child welfare system is a collaborative process between the Department, stakeholders, county departments, and the State Board of Human Services. Due to this collaborative process, the Department is willing to commit to provide guidance, but cannot guarantee specific rule promulgation. The Department agrees to work with stakeholder, county departments, and the State Board of Human Services to determine if rule promulgation is needed to implement the recommended guidance.

The role of Adoption Medicaid will need to be addressed with the Colorado Department of Health Care Policy and Financing.”

INCONSISTENCY IN THE ASSESSMENT OF A CHILD’S NEEDS AND THE DETERMINATION OF SUBSIDIES

Under Volume VII, a child qualifies as having a special need if one or more of the following nine factors act as a barrier to their adoption: physical disability, mental disability, developmental disability, educational disability, emotional disturbance, high risk children (such as HIV-positive, drug-exposed or alcohol exposed in utero), ethnic background or other conditions such as a child over the age of seven, a sibling group that should remain intact or a medical condition likely to require further treatment.⁴⁵

County departments use a wide variety of methods for determining how a child’s needs correlate to an appropriate subsidy or service. Currently, there is not enough information available about these methods to determine whether one is more effective in determining subsidies and services that will support the long-term well-being and stability of a child.

The CPO identified two areas of concern regarding how county departments identify a child’s need for subsidies and services:

1. Inconsistency in the methods used to set a maximum subsidy amount and lack of explanation for how these amounts are determined.
2. Inconsistency in the use of assessment tools to determine a child’s needs.

Maximum Subsidy Rates

County departments determine the maximum subsidy rates available under their programs. However, there are inconsistencies among county departments in how these rates are set. The CPO found that county departments use one of three methods to determine the maximum monthly subsidy payment available to families:

1. A department-wide cap is established without considering the individual child’s needs or “family’s circumstances.”
2. Maximum amounts are created for different categories of children. These categories vary between county departments and may include criteria such as a child’s age or level of care.
3. County departments directly cite the federal standard that an adoption subsidy may not exceed the amount the child was receiving, or would have received, while in foster care.⁴⁶

Colorado law allows county departments to set maximum subsidy rates. Additionally, Volume VII states that each county department shall establish a maximum subsidy amount. That rule, however, provides no guidance for how that maximum should be determined. The rule states:

The county shall establish a maximum amount that could be provided to a family. The amount shall be no more than the rate that is

⁴⁵ Volume VII 7.306.4(A)(3)(d)

⁴⁶ Volume VII 7.306.41(E)(7)

being paid for the child's current out-of-home care or that would have been paid if the child were in paid out-of-home care today.”⁴⁷

This requirement of county departments has resulted in families feeling discouraged when they learn that their child's monthly adoption subsidy rate will be limited by a predetermined maximum amount before the subsidy negotiation takes place. For many families, these predetermined amounts were substantially less than the rate their child was receiving while in foster care.

Families were also concerned when some county departments awarded adoption subsidies based on categorical assignments. These categories outline the maximum subsidy a child may receive. A review of the county departments' policies found that there are predominately three types of categories currently in use:

- **Age Brackets:** More than half of county departments surveyed use Age Brackets to establish their maximum subsidy amounts. For example, one county department has a maximum subsidy rate for children ages 0 to 10, a maximum rate for children 11 to 15 and a maximum subsidy rate for children 15 to 18. Typically, the maximums are higher for the children in older age brackets. Maximum amounts for the same age groups vary by as much as \$100 between county departments of similar size.
- **Needs Based Brackets:** Needs Based Brackets are used by four county departments. For example, one county department has a maximum subsidy amount for children who fall in "Level One," a maximum subsidy rate for children who fall in "Level Two" and a maximum rate for children who fall in "Level Three." In some instances, amounts for the same level vary by more than \$500 between county departments of similar size.
- **Difficulty of Care Brackets:** Difficulty of Care brackets are used by two county departments. Levels are used in these brackets similar to the way levels are

used in the Needs Based Brackets. Amounts for the same level vary by as much as \$400 in county departments of similar size.

The CPO was not provided explanations about why a type of bracket was used by a county department or what analysis was used to determine the maximum amounts that were assigned to each category within the brackets.

Assessment Tools

In determining a child's needs, county departments' practices generally fell within one of two categories, a study of the county department policies found. Some counties use assessment tools to determine a child's special needs. Other county departments did not use any tools and rely solely on a narrative history from the adoptive family and others familiar with the child. Almost all county departments required outside documentation, such as statements from physicians and mental health providers.

Sixteen county departments indicated they use some form of an assessment tool to determine a child's needs. Similar to the service types, the names and content of the assessment tools varied between county departments. Three types of assessment tools were submitted to the CPO: Needs Based Assessment, Difficulty of Care Assessment and Level of Care Assessment.

Some families said they were left questioning whether these tools adequately captured their child's immediate and long-term needs. In turn, families who worked with county departments that do not utilize assessment tools reported feeling concerned that there was not a more measured approach to considering their child's needs.

There is no analysis being performed to determine which assessment tools are the most effective method for measuring the needs of a specific child. As such, it is unclear whether the adoption assistance program is providing the services and benefits most likely to ensure adoptive children's long-term health and stability.

⁴⁷ Volume VI| 7.306.41(E)(7)

Recommendation

5

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare study and evaluate the use of predetermined maximum subsidy amounts in Colorado using existing department resources. This study should include:

- a. Whether the setting of predetermined maximum subsidy amounts is consistent with the original intent of the federal adoption assistance program, which is designed to encourage the adoption of special needs children from the child welfare system. The results of this study should be made public and reported to the General Assembly.

CDHS-DCW Response: AGREE "The Department agrees to Recommendation No. 5. The Department agrees to explore with stakeholders and county departments the use of predetermined maximum adoption assistance amounts in Colorado. The Department will commit existing resources to explore how Colorado may implement a predetermined maximum adoption assistance amount and if the interpretation of this implementation is consistent with the original intent of the federal adoption assistance program to encourage the adoption of special needs children from the child welfare system. The findings of this exploration will be made public and reported to the General Assembly through the Department's annual SMART Act hearing."

Recommendation

6

Recommendation: The CPO recommends that if predetermined maximum subsidy amounts prove to be best practice, then the Colorado Department of Human Services' Division of Child Welfare should use existing department resources to study:

- a. Which method for setting predetermined maximum subsidy amounts best ensures that subsidy amounts support the long-term well-being and stability of adoptive children. The results of this study should be made public and reported to the General Assembly.

CDHS-DCW Response: AGREE "The Department agrees to Recommendation No. 6. As stated in the response to Recommendation No. 5, the Department agrees to explore with stakeholders and county departments maximum adoption assistance amounts. The Department will commit existing resources to explore what methodology best ensures adoption assistance amounts support the long-term well-being and stability of adoptive children. Should the Department determine setting maximum adoption assistance amounts is in the best interest for Colorado's adoption children, youth, and families, the Department will work with stakeholders, county departments, and the Child Welfare Allocation Committee to determine an appropriate methodology. The agreed upon methodology will be made public and reported to the General Assembly through the Department's annual SMART Act hearing."

LACK OF MEANINGFUL PROGRAM EVALUATION AND SUPPORT

The ability to support how county departments administer adoption assistance – and ultimately improve the outcomes for adoptive families – is currently stunted by insufficient analysis and evaluation. Currently, the CDHS employs one person who is responsible for monitoring and analyzing the adoption assistance program, as well as, providing technical support and other guidance to 59 county departments. This person is also responsible for ensuring children adopted through private, non-profit child placement agencies have access to services and benefits. The CPO's independent analysis of the adoption assistance program mimics analysis completed by the state auditor's office 15 years ago. The disparities identified by the CPO and the state auditor demonstrate why more meaningful evaluation of the adoption assistance program is needed to improve outcomes for families and children.

CPO Analysis of Adoption Assistance Benefits

There is a disparity among county departments in the percentage of Dormant or Medicaid Only subsidies awarded to families, compared to the percent of families that receive monthly adoption subsidies.⁴⁸ For example, two county departments of similar size finalized almost the same number of adoption assistance agreements during 2016, according to data from the CDHS. Of those agreements, one county department provided monthly adoption subsidies in 12 percent of its cases, while the other county department provided monthly adoption subsidies in 83 percent of its cases. In this instance, the data demonstrates that a family residing in one county was four times more likely to receive cash assistance, compared to a family living in a similarly situated county.

Additional analysis of the data showed:

- Among county departments that finalized 20 or more adoption assistance

agreements in 2016, the total number of Medicaid Only or Dormant subsidies ranged from 1 to 88 percent of the department's total subsidies.

- Among county departments that finalized 10 to 19 adoption assistance agreements in 2016, the total number of the Medicaid Only or Dormant subsidies ranged from 9 to 50 percent of the department's total subsidies.
- Among county departments that finalized one to nine adoption assistance agreements in 2016, the total number of Medicaid Only or Dormant subsidies ranged from 0 to 100 percent of the department's total subsidies.

While this analysis provides a picture of the various subsidies and services distributed by county departments, it does not provide any insight on whether these subsidies and services are beneficial or harmful in promoting successful adoptions in Colorado. This shortfall was previously identified 15 years ago, in the state auditor's report.

The performance audit found:

*"Currently, Division staff [CDHS] do not collect or review adoption subsidy rates set by all counties. We believe the Division should monitor adoption subsidy rates periodically to determine how these rates affect the Program as a whole. By doing this, Division staff may identify and work with counties to address potential problems with the varied rates set throughout the State. Additionally, the Division should report its monitoring results to the General Assembly on an annual basis."*⁴⁹

The state auditor issued the following recommendation:

*"The Division of Child Welfare Services should establish procedures to collect and review rate information on an annual basis to determine how rates set by all counties affect the Subsidized Adoption Program."*⁵⁰

⁴⁸ According to data provided by the CDHS.

⁴⁹ Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002. (Page 52)

⁵⁰ Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002. (Recommendation 10)

The CDHS partially agreed with the recommendation and provided the following response:

*"The Department will meet with county representatives to develop a survey to collect and review subsidy rates on an annual basis to determine whether rates affect the Subsidized Adoption Program. The results of this survey will be presented to the Senate Health, Environment, Children and Families Committee and the House Health, Environment, Welfare and Institutions Committee."*⁵¹

Since 2003, an annual memorandum has been completed and shared with all county departments. The memo includes a spreadsheet that details the number of adoptions that were finalized in each county, the average assistance payment in that county, the number of Medicaid Only agreements in that county and other statistics. The data is a summary of the past fiscal year. More recent memos include a paragraph which summarizes the data and offers some comparisons to the previous fiscal years. (The most recent memo is available in Appendix C.)

The CPO reviewed eight available memos.⁵² As they currently exist, the memos are not fulfilling the two points of analysis recommended in the 2002 report by the state auditor. In addition to collecting rate information, the recommendation also suggested the data be used to "determine how rates set by all counties affect the Subsidized Adoption Program." These memos provide no analysis correlating how the rates awarded by county departments affect the adoptions assistance program as a whole.

Improved and increased analysis of adoption subsidies and services awarded by county departments, as well as the practices and policies that determine those amounts and services, will be necessary to determine how various adoption subsidies and services

help support families and correlate with successful adoptions in the state.

CDHS Monitoring of the Adoption Assistance Program

Currently, the only requirement that the CDHS review county departments' adoption assistance programs is written in Volume VII. The 2002 State Auditor's Subsidized Adoption Program performance audit, identified several service areas – including many of the areas outlined in this report – that were inconsistent between county departments. According to the CDHS, the results of the audit led to the creation of the State Monitoring/Sanction Process of Adoption Assistance Programs in Counties in 2012.⁵³

While the intent of the monitoring program was to address inconsistencies and compliance concerns, neither the rules dictating the monitoring program, nor the current method of reviewing county departments, accomplish this goal. The current method for reviewing county departments is primarily focused on compliance with federal law. The monitoring program does not effectively review practices employed by county departments and the outcomes those practices have for adoptive children.

The CPO found four areas of the monitoring program that prevent it from serving as an effective tool:

1. The review does not include consistent and meaningful review of county departments' administration of the program.
2. The review does not seek nor incorporate the experiences of adoptive families.
3. County departments may go as long as three years without a review.
4. Currently, the CDHS does not follow up with county departments to ensure all recommendations issued as part of these reviews are adhered to, according to CDHS staff.

⁵¹ Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002. (Page 53)

⁵² CDHS provided the CPO annual memos for fiscal years 2003, 2009, 2010, 2011, 2012, 2013, 2014 and 2015.

⁵³ Per information the CDHS provided to the CPO on July 31, 2017.

Under Volume VII, the CDHS is required to randomly select cases from county departments' adoption assistance caseload.⁵⁴ A monitoring instrument is used to assess whether the handling of those cases was compliant with rule and law. The monitoring instrument is comprised of 14 categories and 77 points of inquiry. These include questions regarding the child's foster care placement and eligibility for adoption assistance. If the cases reviewed result in a passing score – 70 percent compliance with law and rules – the county department will then be reviewed again in three years.⁵⁵

A county department that fails any review, will be reviewed the following year and "offered technical assistance based on the issues identified during the review and will be required to develop a corrective action plan."⁵⁶ The CDHS will also have continued contact with departments between reviews.⁵⁷ To date, the CDHS does not have a record of any county department failing all three reviews during a three-year cycle. This monitoring tool does not provide an effective analysis for determining how services are administered to families. For example, this tool does not address how county departments consider the "family's circumstances" and the "child's needs" in determining the appropriate service or subsidy amount. Additionally, the CDHS review relies solely on documentation and conversations with county departments,

according to the CDHS. The reviews do not include conversations with adoptive families to determine whether they were provided an adequate explanation of the benefits available under the adoption assistance program.

The CDHS provided the CPO with 22 letters issued in 2016, informing county departments about whether they passed their review. Six of those letters did not address the county departments' policies for administering the program. Currently, there is no standardized tool for evaluating county human service departments' policies.

In instances in which the review resulted in recommendations to amend policies, there was inconsistent compliance by county departments and no additional follow up by CDHS.⁵⁹ This trend presents a unique concern for county departments that pass their review, but are also offered recommendations for improvement. In such instances, a county department will not be reviewed again for three years and whatever practice or policy noted by the CDHS may be allowed to continue. Without a more impactful and detailed method for assessing how departments are administering adoption assistance services and subsidies to families, the CDHS does not have the necessary information to determine whether families are receiving equal access to services between county departments.

⁵⁴ Volume VII 7.306.43(A)

⁵⁵ Volume VII 7.306.43(B)(1)

⁵⁶ Volume VII 7.306.43(D)

⁵⁷ Per information the CDHS provided to the CPO on July 31, 2017.

⁵⁸ Per information the CDHS provided to the CPO on July 31, 2017.

⁵⁹ According to information provided by the CDHS during an interview on October 19, 2017.

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare improve the monitoring program so it may provide more impactful direction to county departments. To do this, CDHS-DCW should:

- a. Include the perspective of adoptive families in the monitoring program.
- b. Deepen the program's analysis of **how** adoptive parents experience the adoption assistance program and **how** services and subsidies provided to children impact their long-term well-being and stability.
- c. Consider obtaining additional staff for the purpose of completing more substantive and consistent review of county departments' adoption assistance programs.

CDHS-DCW Response: PARTIALLY AGREE "The Department partially agrees to Recommendation No. 7. The Department agrees to modify the review of county departments' adoption assistance programs to include how the county departments include the perspective of adoptive families, how the county departments consider the adoptive parents' experiences, and how the county departments' efforts potentially impact to the adoptive child(ren)'s long-term well-being and stability. The inclusion of these perspectives is within the scope of the county departments' process. As the supervising/monitoring entity for county practice, the Department does not provide any direct services to adoptive families. The Department agrees to submit a request for additional funding to support additional FTEs to complete more robust reviews of county departments' adoption assistance programs. The Department cannot commit to obtaining additional staff if funding is not available or the State of Colorado does not provide the funding to do so."

TRAINING AND GUIDANCE

The complexity of the negotiation process is most felt by county department staff who are required to carry out legally binding negotiations without being provided adequate training on the legal implications of the adoption assistance program. As stated earlier in this section, there is no required or standardized training at the state level for county department staff who negotiate adoption subsidies with families. The CDHS holds voluntary, quarterly meetings around the state to provide updates concerning the adoption assistance program, as well as to discuss any issues identified by the county departments. Technical support is available as needed.⁶⁰

At the direction of the CDHS, the CPO reviewed the continuing education classes available to county department employees. None of the classes available to employees address the adoption assistance program specifically, including families' rights under the program, nor any information regarding how to negotiate subsidies or provide appropriate services to families. There is no required curriculum for county department staff to complete before negotiating adoption subsidies.

Currently, the same CDHS staff member responsible for monitoring the program is also charged with providing voluntary training and technical support for

⁶⁰ Per information the CDHS provided to the CPO on July 31, 2017.

all 59 county departments. Families and stakeholders – including county departments and non-profit child placement agencies – conveyed frustration with the lack of guidance and support they receive in administering the adoption assistance program. The majority of county

human service directors that spoke with the CPO indicated they would appreciate an increase in guidance concerning the negotiation process. Similar sentiments were expressed by county departments featured in the 2002 audit.⁶¹

Recommendation **8**

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare create training opportunities at the Colorado Child Welfare Training Academy, at each regional center, as well as on-site training opportunities in rural communities to ensure all relevant county department staff have equal access to training regarding the adoption assistance program. Any training curriculum should specifically address:

- a. The law and rules guiding the adoption assistance program.
- b. Access to adoption-informed training to ensure that children and families are receiving the services that are most appropriate for their needs.

CDHS-DCW Response: PARTIALLY AGREE The Department partially agrees to Recommendation No. 8. The Department agrees to assess existing adoption services training through the Child Welfare Training Academy. The Department is not able to commit to the specific list of approaches if it is not assessed to be the most efficient and effective route to meeting the needs of county department staff. Based on this assessment, the Department will modify existing training, create new training opportunities, and ensure onsite technical assistance methods to best meet the diverse needs of county department staff. The Department will ensure incorporation of federal legislation, state statute and rule, and best practice expectations into the modified/enhanced/created training and technical assistance opportunities.”

INADEQUATE AND INCONSISTENT INFORMATION BEING PROVIDED TO ADOPTIVE FAMILIES

How families are notified about the adoption assistance program, and what information is provided, varies greatly across the state, according to a review of county department policies and survey responses. Adoptive families across the state said information about the program is not easily accessible. Many families expressed concern that the lack of information places them in a position where

they are not able to properly advocate for their children. Additionally, there is currently no central information portal that provides the public and adoptive families complete and clear information about Colorado's adoption assistance program.

Stakeholders told the CPO, that when families are not provided clear or consistent information, many turn to online support groups or chat rooms. Often, the information provided to families in these forums is

⁶¹ Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002. (Page 57)

not accurate and causes families to enter negotiations with an unfavorable impression of the county department.

Inconsistent Information Provided to Adoptive Families

Of the county departments that responded to the CPO's survey, roughly a quarter of them said they provide families written information about the adoption assistance program. The materials provided to families vary in depth. Some information packets include language pulled directly from Volume VII or state-mandated forms. On the other end of the spectrum, some county departments provide families with information handbooks. These handbooks contain an extensive amount of material, including a statement explaining the negotiation process, information on tax credits available to the family, resource referral lists for post-adoption support and guidelines on the legal process for adopting a child. Several departments that provide handbooks appeared to use different versions of the same document. When the CPO inquired about the document's origins, the CDHS stated an adoption guidebook for families existed at one time. That guidebook was last revised in 2014, but is no longer distributed by the CDHS.⁶²

With few resources available to them, families expressed a desire for more relatable

materials and guidance outside of the county department they are negotiating with.

Additionally, the majority of county departments submitted state-mandated forms used to administer the adoption assistance program. An analysis of the forms revealed some county departments are using versions of the forms that are almost two decades old. Other county departments use versions that have been updated as recently as 2015.

Lack of Central Information

There is a lack of public information at the state and county level concerning the adoption assistance program. Information regarding the program's benefits and services mandated under federal law, state law and Volume VII are not easily obtainable by the public or families. Currently, there is no central location on the CDHS' website nor the county departments' websites that clearly lists families' rights and requirements of the adoption assistance program. There is no comprehensive list of all county department's written policies. At the time of the writing of this report, 34 county department policies were posted on the CDHS' website. Of those 34 policies, 16 were outdated.⁶³ Currently, the main adoption page of the CDHS' website does not contain meaningful or complete information about the adoption assistance program.

Recommendation 9

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare should complete an inventory of state-prescribed forms and ensure county departments are provided the most up-to-date forms.

CDHS-DCW Response: AGREE "The Department agrees to complete an inventory of state-prescribed forms, and ensure county departments have improved access to and are utilizing the most up-to-date forms."

⁶² Per information the CDHS provided in the CPO on July 31, 2017 in response to inquiry.

⁶³ These 16 polices include effective dates that differed from the more recently revised polices that were submitted to the CPO.

Recommendation: Create an easily accessible portal on its website that contains information about the adoption assistance program. This portal should include:

- a. The most recent versions of all county departments' policies regarding their adoption assistance program.
- b. Information about the adoption assistance program, including eligibility, details about the services and benefits available under the program, the duration of these services and benefits and children and families' rights.
- c. Direct access to Colorado Revised Statute and Volume VII regarding adoption assistance.
- d. Information on the availability of reimbursement for non-recurring expenses.
- e. Information on the availability of mental health services.
- f. Information on the availability of the federal adoption tax credit.
- g. Revise and post the adoption assistance handbook, which should be updated annually.
- h. Contact information for the Adoption Program and Colorado ICAMA Administrator should be available on the same page as information about the adoption assistance program.

CDHS-DCW Response: AGREE "The Department agrees to create an easily accessible page on its website containing information on the adoption assistance program. The adoption assistance program-specific page will include:

- a. The most recent versions of all county departments' policies regarding their adoption assistance program;
- b. Information about the adoption assistance program, including eligibility, details about the services and benefits available under the program, the duration of these services and benefits and children and families' rights;
- c. Direct access to Colorado Revised Statute and Code of Colorado Regulations regarding adoption assistance;
- d. Information on the availability of reimbursement for non-recurring expenses;
- e. Information on the availability of mental/behavioral health services;
- f. Information on the availability of the federal adoption tax credit;
- g. Direct access to the annually reviewed adoption assistance handbook; and
- h. Contact information for the Adoption Program and Colorado ICAMA Administrator."

The Funding

INTRODUCTION

The high costs of providing for adoptive children's complex needs, the duration of the subsidies and the unforeseen expenses for adopted children make the adoption assistance program a unique element of county departments' budgets. The current mechanisms dictating how funds are distributed for the adoption assistance program are insufficient. Similar to other areas of the adoption assistance program, additional research is needed to determine how to better provide funding for the adoption assistance program to ensure subsidies and services promote strong outcomes for children and families.

Specifically, the CPO found:

1. The formula used to distribute funds to county departments is insufficient in capturing the needs of the children and families receiving benefits under the program.
2. Current funding mechanisms inadvertently restrict the expansion of the adoption assistance program as they force county departments to balance the needs of adoptive children against the other areas of their child welfare programs.
3. Additional study is needed to consider alternative methods of funding the adoption assistance program.

FUNDING THE ADOPTION ASSISTANCE PROGRAM

Colorado's adoption assistance program is funded with federal, state and county dollars. These funds are used by county departments to administer the two available forms of adoption assistance in Colorado.

The first is a Title IV-E subsidy.⁶⁴ Under this program, the federal government pays 50 percent of the subsidy, with the remainder

paid for by the state (30 percent) and the county department (20 percent). To be eligible, children must meet specific financial and categorical criteria.

The second subsidy program is a Non-Title IV-E Subsidy. This is a state subsidy program for children who are not eligible for a federal subsidy. In this instance subsidies are paid for with state and county funding – the state contributes 80 percent and the county department contributes 20 percent.

Children may be eligible for one but not both subsidy programs. Under federal law, the amount a child receives as an adoption subsidy may not exceed the amount the child was receiving – or would have received – as a monthly foster care subsidy.⁶⁵

INSUFFICIENT FORMULA

Funds for the adoption assistance program are included in the Child Welfare Block Grant (the block grant.) The CDHS' Child Welfare Allocation Committee (CWAC) is required by statute to determine how the block grant funds will be allocated to all county departments. The CWAC has created an allocation formula that uses a set of variables to determine how much each county department receives for their child welfare programs. The formula is dynamic and the CWAC continually reviews the ethics and effectiveness of the formula. Once the block grant has been distributed, state law ensures county departments have flexibility in spending the child welfare funds. There is no function in the formula that protects or restricts funds for adoption subsidies.⁶⁶

At the time of the writing of this report, the allocation formula for determining county departments' block grants include two variables that represent costs associated with the adoption assistance program.⁶⁷ The two variables are:

⁶⁴ The statutory provisions governing adoption assistance program are in Title IV-E of the Social Security Act, and are commonly referred to as Title IV-E subsidy.

⁶⁵ 42 U.S.C. 673(3)

⁶⁶ Colorado Office of Performance and Strategic Outcomes, Division of Budget and Policy, June 28, 2016, Operational Memo, State Fiscal Year 2016-2017 Preliminary County Allocations

⁶⁷ House Bill 17-1052, which was signed in March 2017. This modified criteria that must be considered in setting the allocation formula. It has not yet been determined whether this change will impact how funds are distributed for the adoption assistance program.

- Average daily subsidy payment. This variable is determined by calculating the county department's average daily adoption subsidy (cash payment) during the three most recent fiscal years.
- Average number of new adoptions. This variable is determined by calculating the average number of adoptions completed each year for the three most recent fiscal years.

The first variable – average subsidy payments – does not adequately capture the total expense county departments incur in administering their adoption assistance payments. The current formula does not account for required benefits the county departments provide adoptive families, outside of monthly adoption subsidies. These benefits include case services and other expenses county departments may incur throughout the life of the adoption assistance agreement. Some examples of these expenses are medication, special therapies such as speech, occupational and physical therapies, as well as other services that are otherwise not provided for in the community or through Medicaid.⁶⁸

In similar fashion, the second variable – average number of new adoptions – does not adequately capture the population in need of or receiving adoption assistance. Finalized adoptions fluctuate substantially year-to-year in counties of all sizes. For example, during the past three fiscal years, nine county departments finalized 20 or more adoptions each year, according to CDHS data. One of the nine county departments saw a 26 percent decrease in the number of finalized adoptions between fiscal year 2015 and fiscal year 2016, while a different county department saw a 115 percent increase during the same time period. CDHS data showed.

During the past fiscal year, three of the nine counties mentioned above reported to the CPO that monthly adoption subsidies accounted for 12, 17 and 25 percent of their annual block grant.

RESTRICTIVE MECHANISMS

The current formula forces county departments

to weigh the immediate needs of children experiencing abuse or neglect, against the needs of a considerably smaller population of children whose immediate safety is less of a concern, but whose long-term needs are often expansive. The cost of providing a subsidy for a child being adopted is an expense that may last almost two decades. Continuing to distribute funds for adoption assistance through the block grant, provides county departments with little opportunity or ability to expand their programs.

PREVIOUS RESEARCH

Colorado's adoption assistance funding mechanisms have been previously studied. The constricting nature of the current funding mechanism has previously been identified as a barrier to the expansion of the adoption assistance program. In 2012, the CDHS coordinated with the Annie E. Casey Foundation (AECF) to examine funding structures at the county and state level. Specifically, the AECF was tasked with studying the funding structure of out-of-home placements in Colorado. The AECF produced four recommendations, one specifically addressing the funding mechanisms for the adoption and guardianship subsidy programs. (A complete copy of the recommendations may be found in Appendix D.)

The recommendation for adoption and guardianship subsidies centered on two substantial changes to the program's structure. The AECF recommended that the CDHS:

1. Reduce county departments' share of guardianship and adoption subsidies from 20 percent to zero.
2. Any future subsidies awarded by county departments should be financed by funds outside of the child welfare allocation block. Meaning, the funds should be housed in a location where county departments are ensured they will be protected for the use of funding the adoption assistance program.

The AECF found that, "... forcing the cost of those cases to be absorbed by a County within the constraints of a fixed allocation impeded

⁶⁸ Volume VII 7.306.52

*the growth of adoption and guardianship cases, and, in turn, also constrains better permanency outcomes for children.*⁶⁹

The AECF went on to say that maintaining adoption and guardianship funds at the county level, "... will, overtime, discourage a County from growing its subsidy caseload

because that cost of doing so will increasingly consume 'fiscal space' within the annual allocation – crowding out other costs."⁷⁰

The AECF's recommendations were not implemented.

Recommendation

11

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare track the total expenditures – including the cost of monthly subsidies and other services – at the state and county level for administering the adoption assistance program. It is vital to understand the total expense of administering the adoption assistance program to determine what gaps or opportunities exist for improving the long-term well-being and stability of children through service delivery.

CDHS-DCW Response: AGREE "The Department agrees to track the total adoption assistance expenditures, including the cost of monthly assistance and other services, at the county department and state aggregate levels."

Recommendation

12

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare use existing resources to study alternative methods of funding the adoption assistance program. The goal of this study should be:

- a. To decrease the variance of subsidy benefits across county departments.
- b. To explore alternative mechanisms that will enhance county departments' ability to support adoptive children and their families.

CDHS-DCW Response: AGREE "The Department agrees with Recommendation No. 12. The Department will commit existing resources to explore with stakeholders and county departments how Colorado may fund adoption assistance programs. Should the Department determine alternative methods of funding are beneficial to Colorado's adoptive children, youth, and families, the Department will work with stakeholders, county departments, and the Child Welfare Allocations Committee to determine an appropriate methodology."

⁶⁹ Annie E. Casey Memorandum to the Colorado Department of Human Services, Recommended Changes to the CDHS/ County Fiscal Relationship, 2012.

⁷⁰ Annie E. Casey Memorandum to the Colorado Department of Human Services, Recommended Changes to the CDHS/ County Fiscal Relationship, 2012.

The Services

INTRODUCTION

Adoption is often viewed as a “happy ending” for children who come from abusive or neglectful backgrounds. However, research on special needs adoptions and the impact of trauma on child development shows that adoption cannot erase the impact of early childhood experiences. In fact, intensive, professional help is often required to help both the child and the parent form and maintain a trusting relationship. Accessing this help – often referred to as “post-adoption services” – months or years after adoptions are finalized can be extremely difficult, according to families, county departments and non-profit agencies.

The CPO found two primary obstacles that affect families’ ability to access post-adoption services:

1. How a child’s future needs are determined during the adoption assistance negotiations. There are minimal centralized, statewide resources for families seeking post-adoption services.
2. Difficulty accessing adoption-informed providers who accept Medicaid.

The needs of adopted children and their families vary significantly across a continuum of child and family functioning. One of the most important services that is needed by families who adopt from the child welfare system is appropriate ongoing care to meet the high physical and mental health needs of their children. It is well documented that children in foster care have significant health care needs, including physical, dental and behavioral health problems. Several behavioral health problems are common for this population because of the trauma associated with the abuse and/or neglect, as well as removal from their homes. As such, comprehensive and coordinated health care is critical to their health, well-being and long-term outcomes.

In Colorado, there is no one place that families can access the post-adoption support and

services they need. While the child welfare system provides some support, this system is not designed for ongoing care or support of adoptive families. This is in large part because the primary mission of the child welfare system is prevention and detection of child abuse and neglect, not post-adoptive supports which require professionals with adoption competent experience and training. Many stakeholders believe that families should be able to access community support, without having to access the child welfare system.

Nationally, the lack of post-adoption services is related to a narrow view of the adoption process. Adoption is often viewed as a “single point in time rather than a lifelong process.”⁷¹ The child welfare system in Colorado, like other states, expends a significant amount of resources on the front end of the process, such as the recruitment of adoptive parents. Equally important, however, is the need to develop resources that promote the long-term success of these relationships, which are inherently complex.

The age at which adoptive children present the highest need for services is not currently being tracked statewide. When post-adoption services are available there is no statewide evaluation of which services are most impactful in promoting the well-being of the child and the stability of the family. Additionally, existing tracking mechanisms in Colorado do not fully capture the number of disrupted adoptions, or provide meaningful analysis regarding why they disrupt and the impact the adoption subsidy or services had on the family.⁷² Without this data, the CDHS and county departments will not be able to measure the effectiveness of existing adoption assistance or determine what supports are needed.

These omissions in research were recognized in the 2002 state auditor’s report, which ultimately recommended the CDHS “implement a process to collect, evaluate and report data on dissolutions and out-of-home placements of adopted children.”⁷³

⁷¹ Adoption in America Today, Donaldson Adoption Institute, December 15, 2016

⁷² Per information the CDHS provided to the CPO on July 31, 2017.

⁷³ Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002. (Recommendation One)

The state auditor's report also recognized the urgency in providing families post-adoption services. The report issued a recommendation that, *'The Division of Child Welfare Services should encourage counties to expand their post-adoption services and supports.'*⁷⁴

County departments have worked to provide additional services and help connect families with providers and non-profit organizations. But county human service directors say their departments' abilities to provide families with post-adoption services is limited. These constraints are the result of inadequacies in the systems most responsible for providing services, and the county departments' role in the life of an adoption.

County human service directors said families may be hesitant to return to them for services for a variety of reasons including the perceived stigma of being engaged with the department. They also expressed concerns that families' hesitancy to contact them often allows their crisis to escalate to a level in which the county department has limited services to offer.

ACCESS TO POST-ADOPTION SUPPORT

Accounting for a child's future needs when determining adoption assistance subsidies or services proves difficult for families and county departments. The determination of adoption subsidies or services often rests on the needs that are apparent at the time the adoption assistance agreement is signed. What the adoption assistance agreements struggle to account for are the needs children may develop months or years from that day. Failing to account for a child's evolving needs may restrict their ability to access crucial services – such as mental health providers, specialized therapies and residential treatment – in the future.

Several families expressed fear and anxiety in their limited abilities to advocate for future services for their children. Many stated they were concerned that the support and guidance they received from the county departments while serving as foster parents,

would immediately stop after the adoption was finalized.

The difficulty of predicting a child's needs over a period of years is felt by both parents and county departments. This has led to adoption subsidy agreements which are limited in providing for future needs of children. As such, the need for statewide, centralized resources for adoptive parents and county departments becomes all the more critical.

Often, in Colorado, where a child lives affects their ability to access services after their adoption is finalized. Colorado has minimal centralized resources providing post-adoption services – such as crisis intervention, mental health care, adoption support groups and parenting classes – to families across the state. Often, access to and the type of post-adoption services available depends largely on where a family lives.

MEDICAID

In addition to providing adoption assistance, county departments rely heavily on Medicaid to provide ongoing mental health and physical care for adopted children. In Colorado, the state's behavioral health system is comprised of multiple agencies, funding sources and focuses of care. Medicaid is a joint state and federal program that provides health care to eligible beneficiaries. The Colorado Department of Health Care, Policy and Financing (HCPF) oversees the administration of Medicaid that impacts qualified children in the child welfare system. HCPF contracts with Behavioral Health Organizations to provide services through a statewide managed care system. Families and many county departments find the Colorado behavioral health delivery system to be inadequate to handle the specialized needs of adopted children.

Families repeatedly expressed frustration with Medicaid Only subsidies. Locating providers who accept Medicaid and have adoption and trauma informed practices can be difficult. One adoptive parent explained that years after the family finalized their adoption, their child began to exhibit violent behaviors. The 10-year-

⁷⁴ Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002. (Recommendation Three)

old would run away from home in the middle of the night and eventually their child was placed on a 72-hour mental health hold. There were no residential treatment centers available under Medicaid and the family had exhausted several other options and their finances in searching for the appropriate treatment. Accessing services was vital for preserving the adoption, the adoptive parent told the CPO. This was one of many stories adoptive families shared with the CPO concerning the difficulty of accessing behavioral health services under Medicaid.

The ability to provide Medicaid to adoptive families is a crucial element of the adoption assistance program. Unfortunately, adoptive families often experience difficulty in locating adoption-informed providers who accept Medicaid. The Adoption Exchange, a non-profit agency in Colorado, maintains a directory of post-adoption mental health professionals. Several county departments stated that they used this directory routinely to help connect families with post-adoption services. The directory, which was updated in April 2017, includes providers who specialize in services such as attachment therapy, trauma care and

post-adoption concerns. The directory includes 88 providers based in 12 different counties. Of those 88 providers, 32 of them – 40 percent – accept Medicaid. Currently, those 32 adoption-informed providers are based in 10 counties across the state, according to the directory. None of those 10 counties were rural counties.

An analysis of the directory and data provided by the CDHS showed that 23 percent of the adoption assistance agreements that were finalized in 2016 were Medicaid Only subsidies. Meaning the families were not provided a monthly cash subsidy. Of the county departments that provided Medicaid Only subsidies during 2016, 70 percent were counties in which there is not currently an adoption-informed provider who accepts Medicaid, according to The Adoption Exchange's directory. (It should be noted that other providers not listed in the directory may be available.)

More than 75 percent of the families the CPO spoke to said they could not secure timely or appropriate behavioral health services for their adoptive children.

Recommendation

13

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare complete a statewide inventory of adoption-informed resources. This information should be used to create a strategic plan that will help connect families with post-adoption resources in every part of the state. This strategic plan should be made public and reported to the Colorado General Assembly.

CDHS-DCW Response: AGREE "The Department agrees to complete a statewide inventory of adoption-informed resources in partnership with the Colorado Department of Health Care Policy and Financing, stakeholders, and county departments. Based on this inventory, the Department, with its partners, will develop a communication plan to improve families' access to post-adoption resources regardless of geographic location. This plan will be made public and reported to the General Assembly through the Department's annual SMART Act hearing."

Recommendation 14

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare coordinate with the Colorado Department of Health Care Policy and Financing to:

- a. Identify the obstacles and barriers preventing adoptive parents from obtaining adoption-competent therapies and other treatments for their children.
- b. Study the rate at which adoptive children are accessing Medicaid services after finalizing their adoption.
- c. Study what services are being supplied by Medicaid providers to adoptive children and whether these services are meeting their specific needs.
- d. Make these findings public and report them to the Colorado General Assembly.

CDHS-DCW Response: PARTIALLY AGREE "The Department partially agrees with Recommendation No. 14. The Department respectfully requests the Child Protection Ombudsman of Colorado provide/assign this recommendation to the Colorado Department of Health Care Policy and Financing as these items are within that Department's scope and that Department's ability to modify, improve, etc. The Department is willing to work with the Colorado Department of Health Care Policy and Financing to identify the obstacles and barriers preventing adoptive parents from obtaining adoption-competent therapies and other treatments for their children; to review the rate at which adoptive children are accessing Medicaid services after finalizing their adoption; and to review what services are being supplied by Medicaid providers to adoptive children and whether these services are meeting their specific needs."

CPO Reply: The CPO agrees that this recommendation is the joint responsibility of both the Colorado Department of Human Services' Division of Child Welfare and the Colorado Department of Health Care Policy and Financing. As such, the CPO will ensure its report and recommendation are presented to the Colorado Department of Health Care Policy and Financing no later than 30 calendar days after the publication of this report. Additionally, the CPO will provide both agencies with any support they jointly determine is necessary to address this recommendation.

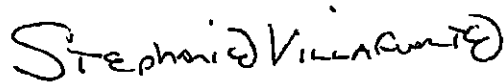
CONCLUSION

The CPO would like to thank all the stakeholders who shared their time and expertise during throughout this investigation. Specifically, the CPO would like thank the Colorado Department of Human Services and the county human services departments for cooperation and willingness to share their knowledge and insight into the adoption assistance program. Finally, the CPO would like to thank the dozens of families who came forward to share their experiences in the hope of creating a better system for the children and the children waiting for the permanent homes.

Pursuant to C.R.S. 19-3.3-103(2), the CPO respectfully submits this report to the citizens of Colorado, the General Assembly and the Colorado Department of Human Services' Executive Director, Reggie Bicha.



Jordan Steffen
Communications and Policy Director
Office of Colorado's Child Protection Ombudsman



Stephanie Villafuerte
Colorado Child Protection Ombudsman
Office of Colorado's Child Protection Ombudsman