Non- Minor Dependents With Disabilities

Expanding the conversation beyond child welfare: A discussion of capacity, competency, non-minor dependents, and more

December 4, 2015

SECTION 1

OVERVIEW & INTRODUCTION

Goals for Today

- Learning Objectives
  - Identify how the adult mental health and developmental services systems intersect with the juvenile court system when dealing with non-minor dependents
  - Understand the continuum of options in addressing issues involving non-minor dependents who lack decision making capacity
  - Discuss the ethical considerations when representing a non-minor dependent with a disability
  - Discuss common case challenges & provide recommendations for approaching and overcoming issues proactively and respectfully for your client

Disabled Population of DD in California

As of March 2014:

- 9,701 or 4.12% of children and adults in the DD system lived in institutional settings including developmental centers, intermediate care facilities or skilled nursing facilities
- 1,111 (.66%) were classified as living in "other" setting,
- 223,827 persons (95.21%) – lived in the community.
- Thirty-six percent (36.40%) are female and 63.60% are male.
- Approximately 36% identifying as white, 35% as Hispanic, 9% as African- American, 6% Asian, 2% Filipino, less than 1% as Native American or Polynesian and about9% as other.
- Almost 25% of consumers in the DD system speak a primary language other than English.
- Over twenty percent (20%) of California's Regional Center consumers are age 42 and up, with 9,463 who are age 62 and older.

Legal Status of DDS consumers

Legal Status	Age18+ yrs
No Conservator	100,979
Parent or Relative	25,500
Has Conservator - not DDS	11,597
Has Conservator - not DDS (Public Guardian)	871
Other (Has Conservator, Such as Private Conservator)	791
Ward of Court	522
Director of DDS	511
Unknown	344
Regional Center Director	168
Miscoded	1
TOTAL ADULT CLIENTS	141,284

Source: California Department of Developmental Services, July 2014

Why is it important to learn about NMDs with disabilities?

- Foster youth have higher rates of chronic medical, mental health, and developmental disabilities
  - 90% of children entering foster care have physical, developmental or mental health needs
  - More then ½ of children entering foster care display two or more medical, developmental or mental health needs
  - 15 – 20% of youth in foster care are estimated to be eligible for SSI benefits
  - 80% of adults formerly in foster care have significant mental health disabilities
- Foster youth with disabilities are more likely to be institutionalized, lack sufficient education, and have higher incidences of homelessness after leaving foster care

SECTION 2

LIMITATIONS ON DECISION-MAKING

Legal Mental Capacity- General

- Rebuttable presumption that all persons have capacity to make decisions/be responsible for their actions. (Probate Code §§ 810-813)
- Person with a disability may still be capable of contracting, conveying, marrying, making medical decisions, and performing other actions.
- Judicial determination that person lacks capacity based on evidence of deficits in mental functioning rather than on a mere diagnosis of mental or physical disorder.

Capacity and Nonminor Dependents

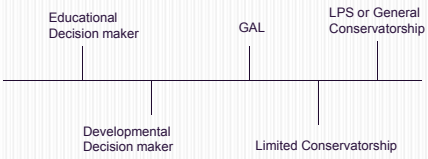
Nothing in this code …shall be construed to provide legal custody of a person who has attained 18 years of age to the county welfare or probation department or to otherwise abrogate any other rights that a person who has attained 18 years of age may have as an adult under California law. ***A nonminor dependent shall retain all of his or her legal decisionmaking authority as an adult.***

Cal W&I Code § 303(d)

GOAL: ADULT SHOULD HAVE THE MOST DECISION MAKING POWER POSSIBLE!

But what options are available if NMD has capacity issues?

Continuum of Most Common Decision Makers Who Can be Appointed:



Educational Rights Holder & Developmental Services Decision-Maker

- **Educational rights holder**: acts on behalf of youth for purposes of IEP and educational decisions. *WIC 361(a)(1).*
- **Developmental Services Decision-Maker**: acts on behalf of youth for purposes of IPP and developmental services decisions *WIC 361(a)(1).*
- Court can make an appointment as early as the initial petition hearing. (WIC 319)
- These apply to delinquency youth as well. (WIC 726)
- Conferred to caregiver if youth is in adoptive placement or a PPLA, unless ordered otherwise. WIC § 361(a)(E).
- Rights transfer at 18 *unless* youth chooses not to hold rights, the court deems the youth incompetent, *or* conservator is appointed.

Accessing Special Education Services - Consent Issues

- For all cases, educational decisionmaking authority transfers to the youth at age 18.
- If youth has educational rights holder prior to18, do they want that person to continue to support them?
- A brief statement of youth's intent to delegate that person to act as their representative will suffice under Ed. Code.
- Or, seek a renewed juvenile court order on the basis of client's stated wishes…or "incompetence"(?)

What if client's wishes differ from the position of representative?

Accessing Regional Center Services - Consent Issues

- For all cases, the regional center needs someone who can consent to evaluations, assessments and services.
- The most common cause of delay in provision of vital services is the lack of someone to provide consent.
- A court order for assessment alone is not sufficient, because the regional center will still need someone to be actively involved in the process who can provide consent for services.
- Seek a (renewed) juvenile court order designating basis: client wishes/incompetence/conservator.

Consent - Best Practices

- Ensure that at every hearing the educational rights holder **and** developmental services decision-maker (if needed) is identified.
- Ensure that person is available and willing to carry out the responsibility. Responsibilities will include a periodic report to the court.
- Preference should be given to relatives/someone known to the nonminor dependent.
- When a nonminor dependent lacking decision-making capacity moves, ensure that a new ERH or DSD is appointed if needed.

Guardian *Ad Litems* for NMDs

- If the court finds an NMD is not competent to direct counsel, the **court shall appoint a guardian ad litem for the NMD.** (WIC 317)
- Common questions without clear answers:
  - Who initiates the GAL inquiry?
  - What standard does the court use?
  - If court deems incompetent, who should serve as the GAL?
  - What is the scope of the GAL's duties?
  - What happens when the NMD or attorney disagrees with the GAL?

Some Guidance Re: NMD GALs?

- **Who initiates the GAL inquiry?**

Civil Code of Procedure 373(c): Relative, friend, any other party, or the court on its own motion

Cal. Formal. Op. 1989-112: ethical opinion indicates an attorney cannot initiate a conservatorship proceeding over client's objection, but does that apply to GAL inquiry?

- **What standard does the court use?**

Case law for parents: "whether the parent has the capacity to understand the nature or consequences of the proceeding and to assist counsel in preparing the case." *In re Jessica G.* (2001) 93 Cal.App.4th 1180, 1186.

- **If court deems incompetent, who should serve as the GAL?**

Family member or NREFM? CASA? Another attorney?

- **What is the scope of the GAL's duties?**

Stands in the shoes of the client. Should not be making the same decisions a conservator would make, as appointment of GAL does not require same due process as appointment of conservator.

- **What happens when the NMD or attorney disagrees with the GAL?**

Attorney should counsel GAL as any client. Ultimately conflicts brought to court's attention?

What is a Conservatorship?

- An individual or agency is appointed by the court to be responsible for a person.
- The court-ordered conservatorship takes rights away from an individual.
- Applies to people over the age of 18 (with the exception of LPS conservatorship).
- Lasts until terminated by a court or statutory occurrence (with the exception of LPS conservatorship).

Consider Alternatives!

- Surrogate Decision-Making : "State sanctioned removal of personhood from an individual."

vs.

- Supportive Decision-Making: Assistance from chosen family members, friends or supporters to understand situations, consider options and use their help to make choices.

BEST PRACTICE: Least restrictive alternative that keeps NMD safe.

Right to Supportive Decision Making

Making one's own choices is a basic right as well as a natural part of human experience, guaranteed under the U.S. and State constitutions as well as other laws. For non-disabled adults, those rights are not contingent upon the quality of decision made. People are free to make mistakes, and learn from them (or not). Making decisions that my be unwise or involve risk does not typically imperil fundamental rights.

Article 12 of the Convention of Rights of Persons with Disabilities – Equal Recognition under the Law

Alternatives to Conservatorships – Supportive Decision Making

- Authorized representation and advocacy (WIC § 4648(b)(2))
- Family input into regional center programs (WIC § 4501)
- Service coordinator as an advocate (WIC § 4647 (c))
- State Council on Developmental Disabilities (formerly, Area Boards) (WIC §§ 4540, 4541(a), 4648(b)(2), and 4705(e))
- Office of Clients Rights Advocacy and Disability Rights California (WIC § 4433 and 4900 et seq.)
- Advocacy Assistance (WIC § 4512(b))
- Transfer of Educational Decision Making Authority (Education Code § 56041.5) (available regardless whether client is a Regional Center consumer)

Alternatives to Conservatorships-Finances

- Representative Payeeship (20 CFR § 416.601)
  **Practice Tip*: This should be a planning item discussed at every TILP meeting from age 16 on for any youth identified as having a disability that may make them eligible for SSI.)
- Guardian ad Litem (CCP § 372; Probate § 3600)
- Power of Attorney for finances is revocable and must be notarized (Probate Code §§ 4400-4409)
- Contract law of Rescission (Civil Code §§ 38, 39, 1688, and 1689)
- Non-Garnishment of SSI and SSDI (42 USC §§ 407 and 1383(d)(1))

Alternatives to Conservatorships – Health Care Decisions

- Advance Health Care Directive requires two witness' signatures or notarized (Probate Code § 4673)
- Regional Center authorization for medical, surgical, or dental care (WIC § 4655)
- Court authorization for specific operations (Probate Code § 3200 WIC 369(b))
- Emergency medical procedures (B & P Code § §2397 and § 1627.7-for dentists; WIC 369(d))
- ICF/SNF interdisciplinary requirements for authorization (H & S Code § 1418.8)
- Case law- Cobbs v. Grant progeny (closest available relative)

What authority does Juvenile Court have to consent to treatment for NMD's? Authorize release of their confidential medical information?

Advance Health Care Directives

- The CWW must provide every youth aging out of foster care with an Advanced Health Care Directive form (Welf & Inst. § 391(e)).
- What if there are capacity issues?
  - Who can witness?
  - Who can be the agent?

Types of Conservatorships

- Probate
  - General of the Person (unable to properly provide for one's own personal needs) - Probate Code § 1801(a)
  - General of the Estate (substantially unable to manage own finances or resist fraud/undue influence) - Probate Code § 1801(b)
  - Limited (Specific to persons w/developmental disabilities) - Probate Code § 1801(d)
  - Dementia - Probate Code § 2356.5
- Lanterman-Petris-Short (LPS) ("gravely disabled") - WIC § 5350 - only conservatorship available for minors

MOST COMMON IN DEPENDENCY: LIMITED & LPS

Limited Conservatorship

- For persons with developmental disabilities
- The only rights that can be limited under a limited conservatorship are:
  - To determine residence
  - To access confidential records
  - To marry
  - To contract
  - To give or withhold medical treatment
  - To control social and sexual contacts
  - To make educational decisions

  Probate Code § 2351.5(b)(1)-(7)
- Each right must be expressly limited on the Letters of Conservatorship or else the conservatee retains those rights

LPS Conservatorships

- All rights are retained that are not specified by the court order. Examples include:
  - Medical Consent
  - Financial duties
  - Voting
  - Driving a car
  - Possessing a firearm
  - Entering into contracts
- LPS Conservatorships must be renewed annually as they automatically expire after one year-WIC § 5361
- LPS Conservatorships may be granted concurrently with (and are superior to) a General/Limited Conservator appointed through Probate -WIC § 5350 (c).

Protections Even with Conservatorships Established

- Sterilization-Probate Code § 1950
- Involuntary commitment-Probate Code § 2356(a)
- Electro-convulsive shock therapy & Psychosurgery--WIC § 5325 *et seq*.
- Tubal Ligation-*Conservatorship of Valerie N.*, 40 Cal.3d 143 (1985)

If conservatorship is inevitable

- Family members as conservators before public entities
- Avoid DDS conservatorships given potential conflict of interest
- Conservator should have few conservatees to maintain fiduciary duties
- Substituted judgment model guided by Lanterman Act
- Conservator should receive training
- Conservetee should be offered maximum independence-training in the IPP re: money management, independent living, self-advocacy, etc.
- Estate vs. Person
- Limited vs. General

How Conservatorships are Established

- A petition is filed in probate court,
- Copies of the petition are sent to specified relatives and agencies,
- Court investigator interviews the proposed conservatee,
- With limited conservatorships, the Regional Center must submit a report, and
- A hearing takes place.

- NOTE: Notice Issues; Jurisdiction Issues of the Probate Court

Establishing Limited Conservatorships: Additional Role of the Regional Center

- Under Probate Code § 1827.5, Regional Center must file a report with the court in a limited conservatorship proceeding. This report must contain information relating to:
  - The nature and degree of the disability
  - Information on the person's physical condition, mental condition and social adjustment
  - Information on the areas in which the person requires assistance
- Regional Center should still play an active role in the process if another conservatorship is being proposed.

Conservatorships - Roles of the Juvenile Court and Counsel for NMD?

- Special Notice for any petition filed in Probate or Mental Health Court? – Probate Code § 2700(c)(1); Form DE – 154, GC- 035.
- Other thoughts?

Continuum – Best Practices

- If conservatorship has not yet been ordered, are there less restrictive alternatives available and appropriate for the proposed conservatee?
- Terms of conservatorship depend on the type of conservatorship ordered.
- Look at the Order and Letters of Conservatorship to determine which one was ordered and what rights were restricted.
- For Limited Conservatorships, was the Regional Center involved in the process?

Ethical Issues

- What does the attorney for a NMD with competency/capacity challenges do if the client's stated position conflicts with the protection or safety of the NMD?
- What if the NMD is not competent to direct counsel? If a client has competency/capacity challenges, can an attorney for a NMD initiate alternative decision-making procedures?

HYPO 1

- Marina is a 19 year old NMD with significant intellectual disability. She has does not communicate verbally. She is a client of the Regional Center. She has resided in the same foster home for the past 10 years. Marina's foster parents love her very much but plan to move to Costa Rica in a few years to retire. They do not plan to bring Marina with them because they believe she will receive better health care in the U.S.
- Marina's physician recently discovered that she has a large ovarian cyst that needs to be surgically removed. Marina is currently hospitalized but the doctors will not go forward with the procedure until someone signs the medical consent forms. The foster parents call Marina's social worker for help.

HYPO 1 - Questions

- What are the options to get consent for the surgery?
- Does Marina need a GAL? Can the GAL sign the consent forms?
- Can Marina's foster parents sign the consent forms? Can the court?
- Should Marina remain in extended foster care?
- Does Marina need a conservator? (if she had a conservator what role would that person play?)
- What needs to happen for Marina to successfully transition out of the dependency system?

SECTION 3

COMPETENCY ISSUES SPECIFIC TO NMDS

Competency Issues Specific to NMD Legal Process

- Extended Foster Care:
  - Remaining in Foster Care
  - Signing Mutual Agreement
  - Signing Voluntary Re-Entry Agreement
  - Signing Transitional Independent Living Plan
  - Placement Decisions
  - Case Planning
  - Health and Education Passport
- Any others? – ***90-day transition plan***?

Remaining In Foster Care

- Common misconception that NMDs receiving Regional Center services or SSI are NOT eligible for extended foster care (EFC) after age 18.
- They are! EFC intended to be as inclusive as possible.
- Statutory guidance:
  - *WIC 11403(b)* Participation Criteria #5 for eligibility: medical exception (state policy specifies RC & SSI).
  - *WIC 303*: NMD who is incapable of making an informed agreement does not need to sign the mutual agreement.
  - *WIC 13754:* NMD right to receive SSI and be their own rep payee, if appropriate.

NOTE: Eligibility for EFC does not require a case to remain open. This should be a time for thoughtful case & transition planning…

Remaining in Foster Care

- Participation Criteria
- NMD Responsibilities
  - Work with the social worker/probation officer to ensure ongoing participation in the TILP
  - Report changes of eligibility and placement.
  - Demonstrate incremental responsibility.
  - Participate in hearings in person or telephonically.
  - Make health care decisions, including decisions regarding medications.
  - Participate in placement decisions/responsibilities (i.e. Shared Living Agreement).
- Opt Out

Mutual Agreement

- A youth must sign a mutual agreement [SOC 162] within six months of turning 18.

  AB 1712 clarifies that a NMD who is determined "incapable of making an informed agreement" does not need to complete a mutual agreement
- A Mutual Agreement is an agreement between the NMD and the agency specifying the youth's willingness to:
  - Remain under the juvenile court's jurisdiction as a NMD,
  - Remain in a "supervised placement,"
  - Report changes relevant to eligibility and placement, and
  - Work with the Agency on the implementation of the TILP participation activities.

Voluntary Re-entry Agreement

- The signing of a **Voluntary Re-entry Agreement/SOC 163**
  - The youth first contacts the agency (child welfare or probation) directly and requests to re-enter.
  - The youth must then signs a **VRA** with the agency to initiate services.
  - The VRA documents a youth's willingness and intention to:
    - Be placed in a supervised placement setting
    - Participate in eligibility requirements.
    - Have a transitional independent living case plan.
    - Participate in the filing of the 388, if applicable.
    - Re-enter foster care.

      ** If a VRA is signed, a mutual agreement is NOT required*

Or

- **A 388 (e) petition (JV-466) is filed** by the youth ***or other interested party*** in the county of general jurisdiction or the petition is submitted in the county of residence.

WIC 11400 (z), 388 (e), 11403 (e); Forms related to re-entry: JV-464, JV-466, JV-468

Medical Decisions

- NMDS can make their own medical decisions, including psychotropic medications
- NMDs are responsible to make all their own doctor and dentist appointments.
- NMDs have privacy rights and make decisions about sharing confidential medical information.

There is no provision in the law delegating the juvenile court authority to abrogate an adult client's right to control her own confidential medical information, even *in her own best interests.*

HYPO 2

- Frank is a 20.5 year old NMD youth who resides in a SILP and attends community college. Frank has no close relatives. Frank lives with type 1 diabetes which he manages well, but which places him at high risk for a variety of poor medical outcomes. He has disclosed to his attorney and his social worker that he occasionally uses marijuana and methamphetamine but does not believe he has a problem. Frank knows that his SILP funding will end in 6 months and he wants to know what he should be doing to plan for his future.

HYPO 2 - Questions

- Who can Frank turn to for help and advice about how to create an advanced health care directive?
- Who should Frank consider to be his health care proxy? What should he do if he has no one to make decisions for him if he became incompetent?

SECTION 4

PLACEMENT OPTIONS FOR NMDS WITH DISABILITIES

Placement Options for NMDs with Disabilities

Placement Options for <u>both</u> minors and NMDs:
- Approved home of relative or NREFM
- Certified home of an FFA (includes ITFC)
- Foster Family Home
- THPP (with limitations)
- Group Home (with limitations)
- Home of a Nonrelated Legal Guardian
- Dual Agency Regional Center Homes*

*** Consider transition to Family Home Agency (FHA) post-dismissal**

Placement Options only for NMDs:
- SILP (based on readiness)
- THP-Plus FC

Limitations on Group Homes for NMDs

- Youth <u>may only</u> remain in group home if under age 19 AND continuing in group home **is in NMDs best interest in order to complete high school or equivalent**
- Decision on group home placement is to be a youth-driven, team-based case planning process

Group Homes for NMDs (con't)

- Once NMD completes high school or turns 19, whichever is first, continuing in group home prohibited UNLESS
  - NMD has a ***medical or mental health condition*** (participation condition #5) and continuing in group home functions as a short-term placement
  - Treatment services to alleviate the medical condition cannot be sole basis for disqualification from group home (Ex: youth is seriously emotional disturbed and is in therapeutic day treatment)
  - Treatment strategies should prepare NMD for discharge to a less restrictive and more family-like setting.
- Group Homes also have the option of obtaining recertification through Community Care Licensing to provide services to NMDs up to 21 years now.
  - Frequently chosen by delinquency placements

Case Plan for Group Home Placements (ACL 11-77)

- If admission or continued placement in group home is necessary to finish high school or due to medical condition must detail reason in case plan.
- **Case plan must specify:**
  - Why a group home is the best placement to meet the needs of the NMD
  - How placement will assist NMD's transition to independent living
  - The treatment strategies that will be used to prepare the NMD for discharge to a less restrictive setting or more family like setting
  - A target date for discharge from the group home
  - Periodic review of the placement to ensure that it remains the best option for the NMD and progress is being made toward achieving the goal of independent living

Where can a NMD with disabilities go after exiting a group home?

- THP-Plus FC
- Certified Home of a Foster Family Agency (Intensive Treatment Foster Care)
- Foster Family Home
- Relative Caregiver, Non-Related Extended Family Member
- SILP (if youth meets readiness assessment)

KEY is to ensure the placement has supports to meet the youth's ongoing needs!

SILP Approval Process

- Two-part approval process:
  - Approval of the setting: the federal government has clarified that placements are eligible for federal IV-E funding as Supervised Independently Living Settings (SILS) so long as the placements are *voluntary* and there is *continued supervision by the responsible agency*. (See Child Welfare Manual 8.3A8d Question 2).
  - Youth readiness: a "flexible" assessment that should take into account particularized needs of the youth and the type of setting being considered (See ACL 11-77 at p. 8).

SILP Challenges for Youth Exiting Group Homes

- Many young adults exiting group homes will require extensive support including case management, mental health, and other services
- Many youth in group homes are on certificate of completion track (vs high school diploma) and may struggle to find appropriate settings to continue their education
- They have often had limited or no work, budgeting and money management experience, and more limited access to ILS programs and services
- They may need extended supportive housing to develop skills in managing daily tasks and living independently
- Group homes and THP Plus Foster Care can support youth in preparing for SILPs by working with them on financial skills, daily living tasks, and independent living skills
- Some youth with more significant mental health needs may need an adult treatment facility setting before becoming ready for THP+FC or independent living

Adult Residential Settings

- NMDs *are* eligible for a SILP payment (if otherwise eligible) in a substance abuse, mental health or other adult residential treatment facility.
- Adult residential facilities (board and care vs. treatment; separately licensed by CCL; for adults who cannot provide for their own daily needs and may be "physically handicapped, developmentally disabled, and/or mentally disabled") are currently *not* recognized by CDSS as eligible for SILP payments; however, adult residential facilities can be funded by other funds, such as SSI, without requiring exit from foster care.

Placement

Considerations When Determining Placements for Youth with Disabilities

- Developmental Level
- Cognitive Level (advanced reasoning skills)
- Self Care Skills
- Socialization
- Basic Trust

Expanding the Placement Conversation

What if a nonminor dependent meets participation criteria for extended foster care but the only appropriate placement, taking into account the nonminor dependent's disability is one that is not eligible for foster care funds?

HYPO 3

- Adrienne is an 18 year old NMD youth who has been in the foster care system for 10 years after being severely sexually abused by her mother and her mother's boyfriend. Since her mother was released from jail 3 years ago, Adrienne has regressed and struggled with anorexia and self mutilation. Before her 18th birthday she was involuntarily hospitalized 6 times for suicidal thoughts and plans, and bounced in and out of level 14 and level 12 placements. Adrienne's current goal is to move in with her boyfriend Ted. She has told her attorney that Ted has sexually exploited her on a few occasions but he takes good care of her. She is asking for his home to be assessed for a SILP.

HYPO 3 - Questions

- Does Adrienne need a GAL?
- Does Adrienne need a conservator?
- What should Adrienne's attorney recommend to the court?
- Can Adrienne's attorney go against Adrienne's stated wishes?

SECTION 5

SERVICES & RESOURCES FOR NMDS WITH DISABILITIES

Overview

- Specialized Foster Care Rates
- Supplemental Security Income (SSI) and/or Social Security Benefits
- Transition Planning & Independent Living Program
- Regional Center
- Special Education Services
- Department of Rehabilitation Services
- California Children's Services
- In Home Supportive Services (IHSS)
- *Katie A.*, Therapeutic Behavioral Support, Wraparound and other Specialty Mental Health Services

- *There is no coordinated system to ensure foster youth have access to appropriate services --YOU can help navigate resources!*

Specialized Rates for NMDs with Disabilities

- **Specialized Care Increments**
  - County Supplement to basic rate for caring for children with medical, emotional/behavioral needs
  - County creates own policy and rates vary by county – 4 counties (Modoc, Plumas, San Benito, and Sierra) do not have SC.
  - SCIs range from a low of $24 (Alameda) to a high of $1,975 (Imperial) (2/15)
  - Available to Foster Family Homes, Relative Caregivers, Non-Related Guardians, and NREFMs
- **Intensive Treatment Foster Care**
  - For seriously emotionally disturbed youth – alternative to higher level group homes (rates from $4034 - $5581)
- **Dual Agency Rate for Regional Center Consumers who are AFDC-FC eligible ($2,209)**
  - Supplement to the Dual Agency Rate (Availability of an additional Supplement ranging from $250, $500, $750, or $1,000, depending on severity of need due to self-care deficits, physical and motor coordination impairments, medical or sensory conditions, or disruptive or self-injurious behavior)

Supplemental Security Income (SSI)

- SSI is a federal welfare program that pays a monthly benefit and provides categorical linkage to Medi-Cal
- In order to qualify, individuals must:
  - Have limited income and resources
  - Have qualifying physical and/or mental disabilities
  - Be a citizen or qualified non-citizen
- It is available for children and adults, although the standards for disability are different:
  - Adults (over 18):
    - Inability to engage in substantial employment and expected to last at least 12 months or result in death.
  - Children (under 18 or 22, if in school)
    - Marked by severe functional limitation and expected to last at least 12 months or result in death.

SSI, cont'd

Why is it important to consider SSI for transition age youth?

- Monthly case assistance is more than other case assistance programs (Cal Works, General Assistance) and can help avoid homelessness. In CA, a qualifying individual can currently receive up to $1,145.00 per month, including NMDs under the "NMOHC rate."
- Medi-Cal will continue beyond age 26 (SSI-linked Medi-Cal instead of Former Foster Youth-linked Medi-Cal)
- Youth can work part-time and still receive SSI, depending on income
- Youth can receive school scholarships and SSI simultaneously
- Social Security Administration has several programs designed to help SSI recipients attempt work without losing eligibility
- SSI also helps establish eligibility for IHSS, some affordable housing, and other programs.

SSI, cont'd

What do I do if I think my client might be eligible for SSI?

- Technically, you shouldn't have to do anything
  - WIC 13757 requires that counties screen all youth in foster care at age 16.5-17.5 for SSI then refer their cases, along with supporting medical and educational records, for application with SSA.
  - BUT, not all CSWs know about the law. Talk to them regarding any youth who is 16 or older or **have the court order the screening to be completed if it has not happened.**
  - IMPORTANT: It can take a year or more from the application to approval so it is important that the youth be screened and that applications are submitted well in advance of when a youth ages out so that they have those funds when needed.

SSI, cont'd

What if the Application is Denied?

- Social Security Administration will send the notice of approval or denial back to the county, who will notify you of the decision
- If the application is denied, consider referring the matter to local legal aid agencies and send copies of any and all records in your file that may relate to your client's disability, including medical, psychological, school and the most recent court status report
- Request that the court case remain open until the SSI application has resolved.
- NOTE: Section 301 - Children who were eligible for SSI but denied at age 18 under the adult disability standard can continue to receive SSI if they are participating in a vocational rehabilitation program or have an IEP.

SSI, cont'd

SSI and AB 12

Can a NMD receive both EFC benefits under AB 12 and SSI ?

- Yes. A NMD is eligible for extended foster care if they receive SSI. Offsetting rules apply so that the total benefit received will be equivalent to the higher benefit amount. If the foster care benefit is higher than the SSI benefit, then the youth will receive only the foster care benefits and the child welfare agency will work with the SSA to put the SSI benefits into suspense (known as the "workaround") and preserve the youth's eligibility so that SSI payments can start when foster payments end.
- Youth who receive a SSI benefit that exceeds their foster care maintenance may remain in care, even if they don't receive the foster care payment. They continue to receive all the services, including case management and court supervision that all youth in extended care receive.
- If a NMD remains in care, the child welfare agency needs to assist him/her to file with the SSA to become their own payee, unless it is not in their best interest.
  - If not in best interest, the child welfare agency must either locate a local representative payee or act as the representative payee for the NMD.

SSI, cont'd

Common Questions:

Q. Are alcohol or drug dependency considered disabilities?

No. However, if they are a response to an underlying mental health issue, or create physical problems that outlast the substance abuse, eligibility is possible.

Q. Will a caregiver's income impact SSI eligibility?

No. If a child or NMD is living in a household without a parent, Social Security only looks at the income and resources of the child/NMD.

Q. What if my client is undocumented?

Non-citizens who are not "lawfully present" in the U.S can not get SSI. A green card is not always enough. However, CAPI (Cash Assistance Program for Immigrants) pays a monthly benefit to disabled non-citizens who otherwise meet the SSI requirements. Applications can be filed at a DPSS office, however, CAPI eligibility requires that an application for SSI be pending or already denied. Therefore, make sure the CSW refers for an SSI application well before the youth leaves foster care. With an SSI denial letter in hand, the youth can be helped to file for CAPI at a local DPSS office.

Special Immigrant Juvenile Status (SIJS) should also be explored to initiate the process for green cards and citizenship.

Social Security Benefits

- Title II Benefits: Derivative Social Security Benefits - Also known as Survivor's, Childhood Disability, or Dependent Adult Child (DAC) Benefits

Eligibility

- Primary Wage Earner Eligibility (with 40 quarters of coverage):
  - Deceased, Retired, or Disabled (on SSDI)
  - Citizenship: Lawfully present
- Derivative Beneficiary's Eligibility
  - Unmarried
  - Under 18 (or 19 and a full time student through grade 12) or over 18 if disabled and disability began before age 22 (DAC)

Social Security Benefits, cont'd

- Social Security Benefit Amounts
  - Depends on Primary's Earnings Record & Number of Derivative Beneficiaries. Derivatives: 50% of Primary's Benefit under Retirement or Disability, 75% under Survivor's, up to 150%-180% of Primary's overall amount.
- Health Insurance
  - After 24 months, eligible for Medicare [Part A (Hospital) automatic, Part B (Physician) and Part D (Prescription Drugs) are optional & require premiums
  - Medi-Medi's: Medi-Cal for Pickles (i.e., had SSI but cut off due to Social Security benefit COLA) or Pseudo-DAC Pickles (had SSI but then became eligible for higher DAC amount)

Transition Planning & Independent Living Program

- These are two separate, yet closely related documents.
- The Transitional Independent Living Plan (TILP) is a 2 page form attached to the Transitional Independent Living Case Plan (TILPC).
- The case plan (TILCP) describes the goals and objectives of how the NMD will make progress in transitioning to living independently, and includes sections of the court report narrative. The TILCP addresses the supportive services to ensure meaningful participation in one or more of the participation criteria described in section 11403(b), housing, and plans for transitioning to living independently.
- The TILP is the written individualized service delivery plan that identifies the nonminor's current level of functioning, emancipation goals and specific skills needed to prepare the nonminor to live independently.
- TILP forward looking and TILCP is what is the reasonable efforts services the court will be looking at in the next six month review.

WIC 11400(y), ACL 11-69, Rule of Court 5.502

Transition Planning & Independent Living Program, cont'd

- ILP Equivalency Requirement (Division 31, Regulation 31-525)
  - ILP participation is deferred only if the youth is physically or mentally unable to benefit from the ILP ***as determined by the youth's primary care physician or health/mental health care professional or if the youth declines to participate*** in the ILP.
  - If ILP participation is deferred, the social worker/probation officer on behalf of youth in foster care or the ILP coordinator on behalf of KinGap youth and other eligible youth shall document in the TILP the reason(s) for the deferment. A redetermination of deferment shall be made at least every six months and documented in the TILP.
  - Eligibility for the ILP shall not be determined by outside agencies such as contractors or vendors.

NOTE: The county cannot refuse to work with a youth who is eligible for ILP. If the county cannot provide *appropriate supportive services* (WIC 11400(y)) that reasonably accommodate the youth's disability (as documented on the TILP), then some other agency or provider needs to be identified on the TILP as providing those services. *See recent guidance from USDHHS and USDOJ.*

Regional Centers

- 21 private, non-profit organizations statewide contracting with the Department of Developmental Services (DDS) to provide developmental services and supports to California's developmental disability population
- Provide case management, advocacy, and specialized services & supports under the Lanterman Act and Early Start programs to approx. 278,000 consumers statewide
- Eligibility is not means-based or dependent upon immigration status

Regional Centers, cont'd

Lanterman Act Eligibility

- Intellectual Disability (formerly Mental Retardation),
- Autism,
- Cerebral Palsy,
- Epilepsy, or
- The "Fifth Category"
  - A disabling condition found similar to mental retardation *or*
  - requires treatment similar to that required for persons with mental retardation

Which…

- Is expected to continue indefinitely,
- Originates before age of 18,
- Constitutes a "substantial disability" in *three or more* of the following areas: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and
- Does not include conditions which are "*solely*" physical, learning disabling, or psychiatric in nature.

Regional Centers, cont'd

Categories of Regional Center Services

- Assessment Services
- Habilitation and Training
- Treatment and Therapy
- Preventive Services
- Living Arrangements
- Community Integration
- Employment/Day Programs
- Family Support Services
- Relationship Services
- Emergency and Crisis Intervention
- Specialized Equipment
- Transportation Services
- Facilitation Services
- Self-Advocacy
- Advocacy

Regional Centers, cont'd

Examples of Regional Center Services

- Behavior intervention services
- Community integration services
- Advocacy assistance
- Counseling
- Day Programs
- Work Services Programs
- Residential Services
- Independent Living Services
- Supportive Living Services
- Adaptive equipment, i.e., wheelchairs, hospital beds, etc.
- Emergency and crisis intervention
- Respite for caregivers (in-home or out-of-home)
- Social skills training
- Specialized medical and dental care
- Transportation services to ensure delivery of services
- Sexuality Training
- Parenting Skills
- Adaptive Skills Training

Regional Centers, cont'd

Limits on Certain Services for Youth 18-22

- For youth 18-22 who are eligible for special education who have not received a diploma or certificate of completion, the following services from the RC may be limited:
  - Day program
  - Vocational education
  - Work services
  - Independent living program
  - Mobility training and transportation services
- If IPP team determines school cannot provide the services, or the school's services are not appropriate, RC can purchase instead.
- Exemptions may apply (i.e., extraordinary circumstances)

Regional Centers, cont'd

AB 1089 (2014)

- Creates a uniform procedure regarding the transfer of cases between regional centers for foster youth, and
- Mandates clear timelines for the transfer between regional centers as well as the commencement of services.
- Requires communication between the regional centers to ensure that services are in place as soon as possible but no later than 30 days.
- If services are not in place after 30 days, the regional centers will be obligated to notify the court and provide updates every 30 days thereafter until all services are in place.

Welfare and Institutions Code Section 4643.5(d) and (e)

Regional Centers, cont'd

Services for Parents with Disabilities

- Supported Living Services with a Parenting Component
- Parenting Courses
- Anger Management Courses
- Sexuality Training
- Family Counseling Services
- Advocacy Assistance
  - Court
  - Other Agencies
  - Benefits

Welfare and Institutions Code Section 4687

Regional Centers, cont'd

Coordination Between RC and County Mental Health

- Each regional center and county mental health agency must have a memorandum of understanding (MOU). § 4696.1
- Regional Center must help you advocate for services from CMH. § 4648(b).
- Regional Center must not allow any gaps in service.

Regional Centers, cont'd

Emergency and Crisis Intervention Services

- Include mental health services and behavior modification services in order to stay in their chosen living arrangement. § 4648(a)(10)
- This could include extra staff or support in the home. § 4648(a)(9)
- If needed, emergency housing must be made available in the home community.
- Every effort must be made to return the consumer to his/her home as soon as possible.

Regional Centers, cont'd

At Risk of Entering the Developmental Center

- Regional Resource Developmental Project (RRDP) must conduct an assessment of the situation.
  § 4418.7
- Regional Center must provide any emergency services that the RRDP finds necessary.

Regional Centers, cont'd

Regional Resources Development Projects

- 5 RRDP's in the state. Each serves a different area.
  - http://www.dds.ca.gov/RRDP/RRDPListing.cfm
- Primary purpose is to provide support services to move clients out of the Developmental Centers (DC's).
- RRDP provides assessment and evaluation to determine if placement in a developmental center is appropriate and how it can be prevented.

Regional Centers, cont'd

Disputes with Regional Center

- File for Fair Hearing
  - Must file within 30 days of receiving Notice of Action (NOA)
  - If services are being terminated/reduced, file within 10 days of receiving NOA to continue services pending appeal - "Aid Paid Pending"
- 4731 Complaint – Regarding Rights Violations
- Contact DRC & OCRA

Regional Centers, cont'd

SB 1048 (2012)--Joinder

- Authorizes the court, at any time after a petition has been filed, to
  - join in a juvenile court proceeding any agency that the court determines has failed to meet a legal obligation to provide services to a child who is the subject of a dependency proceeding, a minor who is the subject of a delinquency proceeding, a nonminor person over whom the juvenile court has retained dependency or delinquency jurisdiction, or a nonminor dependent, as defined.
- Definition of "Agency"
  - any governmental agency or any private service provider or individual that receives federal, state, or local governmental funding or reimbursement for providing services directly to a child, nonminor, or nonminor dependent.

Special Education Services

"It is estimated that 30 to 40 percent of foster youth are in the special education system"

- "FAPE": Youth with disabilities are entitled to "free and appropriate public education"
- Must be in the least restrictive environment
- Schools are to seek out youth who may require special education services
- When eligible for special education, a child/youth is entitled to an IEP until they receive their high school diploma or turn 22, whichever is first

Special Education Services, cont'd

- **Section 504 of the Rehabilitation Act**
  - Passed by Congress in 1973
  - Anti-discrimination measure
  - Students who have a physical or mental impairment which substantially limits a major life activity (such as learning)
  - More widely available to children who may not meet IDEA eligibility
  - Accommodations formalized in a 504 Plan

Special Education Services, cont'd

- **Individuals with Disabilities Education Act (IDEA)**
  - Passed by Congress in 1975
  - Entitlement program
  - Categorical eligibility
  - Broader array of accommodations and services and heightened due process protections
  - Accomodations and services formalized in an IEP

Special Education Services, cont'd
The Individual Education Plan (IEP)

- Individualized Education Program (IEP): written document developed by a team made up of the school district, therapists, teachers, parents and caregivers. Goal to help improve the child's educational outcomes
- 5 main parts of an IEP:
  1. Statement of Eligibility
  2. Present Levels of Performance
  3. Annual Goals & Objectives
  4. Statement of Placement
  5. Statement of Services
- Must be signed by the person with education rights in order for plan to go into effect

Special Education Services, cont'd
The Individual Transition Plan (ITP)

- Beginning at age 16, youth with IEPs should have an Individualized Transition Plan (ITP) developed
- ITP should include:
  - employment training and experience
  - independent living skills (e.g. cooking, cleaning, mobility)
  - career counseling
  - other services
- Schools are required to conduct reviews of ITP every year AND provide all services outlined in the plan or linkage to sites where the services could be provided
- Participation by Department of Rehabilitation and Regional Centers

Special Education Services, cont'd
Transition Planning for Foster Youth

- ITPs for youth in foster care often fall short:
  - Less likely to include goals for post-secondary education. **Only 31% had a goal in this area.**
  - Less likely to have goals for developing independent living skills. **Only 16% of plans had a goal in this area.**
  - Significantly fewer goals overall. **20% of plans had no goals.**
  - A family member, foster parent or educational surrogate was present less than half the time. **22% of the time the student was listed as the sole person responsible for working towards a goal.**
  - Lacked a specific timeline for goal completion. **Only 7% of goals identified a specific target date.**

Department of Rehabilitation

Helps individuals with disabilities:

- Have opportunities to obtain gainful employment in INTEGRATED settings
- To be ACTIVE and FULL partners in the VR process making meaningful and informed choices

Vocational Rehabilitation (VR) Eligibility

In order to be determined eligible for VR services, the individual must have:

- A **Physical or Mental Impairment** which is a;
- A **Substantial Impediment** to employment;
- A **Need for** VR services to "prepare for, secure, retain, or regain employment;" and
- Can **Benefit** from VR services

- **SSDI/SSI** - Beneficiaries of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)

VR Services

- Assessment for determining eligibility, priority, and VR needs
- VR counseling, guidance and referral;
- Physical and mental restoration services;
- Vocational and other training services;
- Maintenance;
- Transportation;
- Services to family members;
- Interpreters, Readers, and orientation and mobility services for individuals who are blind;
- Job-related services;
- Supported employment services;

VR Services (cont'd)

- Personal assistance services;
- Post-employment services;
- Occupational licenses, tools, equipment, initial stocks, and supplies;
- Rehabilitation technology;
- Transition services
- Technical assistance and other consultation services for self-employment or telecommuting.
- Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

California Children's Services (CCS)

- State program that helps children with certain diseases, physical conditions, or chronic health problems.
- CCS pays for doctor visits, hospital stays, surgery, Physical and occupational therapy, lab tests and x-rays, orthopedic appliances and medical equipment.
- Authorizes EPSDT in-home nursing for children under 21 w/CCS conditions who are not on a home and community based waiver.
- After Care Services - 22 CCR § 41510.3

In Home Supportive Services (IHSS)

- IHSS pays for attendant services so that Medi-Cal recipients with disabilities can remain safely in their own home.
- IHSS is considered an alternative to out-of-home care, such as nursing homes or board and care facilities.
- Services include: housecleaning, meal preparation, laundry, grocery shopping, personal care services (such as bowel and bladder care, bathing, grooming and paramedical services), accompaniment to medical appointments, and protective supervision for the mentally impaired.

Services for Youth with Special Mental Health Care Needs

Wraparound Services

- Wraparound services can help transition a youth from a group home to a lower level of care
- Wraparound services uses a team approach brings together friends, family, and other important individuals in the youth's life
- Services areas include transition planning; lack of supports; impaired functioning; social, communication, and living skills
- Wraparound services are intensive, individualized, strengths based and focused on supporting youth in identifying and developing permanent connections
- Eligibility is for youth currently placed in a group home and transitioning to a lower level of care within 3 months of discharge date

Services for Youth with Special Mental Health Care Needs, cont'd

Katie A. Services

- Intensive Care Coordination (ICC)
  - For all Subclass Members
  - Facilitates implementation of a cross-system/multi-agency collaborative services approach
  - Uses the Child and Family Team approach
- Intensive Home Based Services (IHBS)
  - For all Subclass Members who meet Medical Necessity
  - Skills-based intervention to address self-care, self-regulation or other functional impairments

Services for Youth with Special Mental Health Care Needs, cont'd

Therapeutic Behavior Support (TBS)

- *Supplemental* specialty mental health service covered under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Medical benefit
- Intensive, individualized, one-to-one behavioral mental health service available to children/youth with serious emotional challenges and their families, who are under 21 years old and have full-scope Medi-Cal
- Supplements other Specialty Mental Health Services such as day treatment programs, wraparound services, medication management

Expanding the Conversation: Sole vs. Multiple Agency Involvement

Pros and Cons of Continuing Juvenile Court Jurisdiction where Adult Developmental Disability and/or Mental Health Service Systems Are in Place

HYPO 4

- Denise is a 20 year old regional center client who will be 21 in 3 months. She is dually diagnosed with mental health issues and intellectual disability. Her father is deceased and her mother is in prison. She was placed with her maternal grandmother in Modesto (VMRC catchment area). Six months ago, Denise's grandmother took Denise to Stockton Hospital where she was 5150'd and then released to shelter in San Francisco. Human Resources couldn't find a placement, so she sat at shelter in San Francisco for months while GGRC tried to find a placement. Then grandmother agreed to take her back last month, so Denise returned, and Denise's RC case was transferred back from GGRC to VMRC.
- Now, Denise's grandmother has again dropped her at Stockton Hospital and doesn't want Denise to return. Stockton Hospital is refusing to 5150 her; and the Human Resources social worker is saying there are still no foster care placements. Denise has a GAL, but is unconserved, has no developmental services decisionmaker, and does not receive SSI, as her grandmother was getting dual agency rate foster care payments for her care.

HYPO 4 - Questions

- Which agency is responsible for placement? What can be done to assist Denise in finding a placement?
- What can be done to ensure SSI is in place when jurisdiction is terminated?
- Which Regional Center is responsible for Denise's care? How can we assure Regional Center is providing services?
- What other adult systems of care might be available to help Denise?

Resource Bank

For more materials on transition planning for nonminor dependents with disabilities, visit:

https://drive.google.com/folderview?id=0B3Hy1TEV_4JycVhjcGlJT3B4enM&usp=sharing

Contact Information

- **Eliza Patten**, Senior Staff Attorney, Legal Services for Children, ph. (415) 780-6351, Eliza@lsc-sf.org
- **Abby Eskin,** Attorney Supervisor, Children's Law Center of California, (323) 980-7700, eskina@clcla.org
- **Brian Capra**, Senior Staff Attorney, Public Counsel, ph. (213) 385-2977, bcapra@publiccounsel.org

THANK YOU!

QUESTIONS?