

New Rulemaking: Foster Care Legal Representation

Allison Green, Legal Director

June 10, 2024

NACC

National Association
of Counsel for Children



Promoting
Excellence

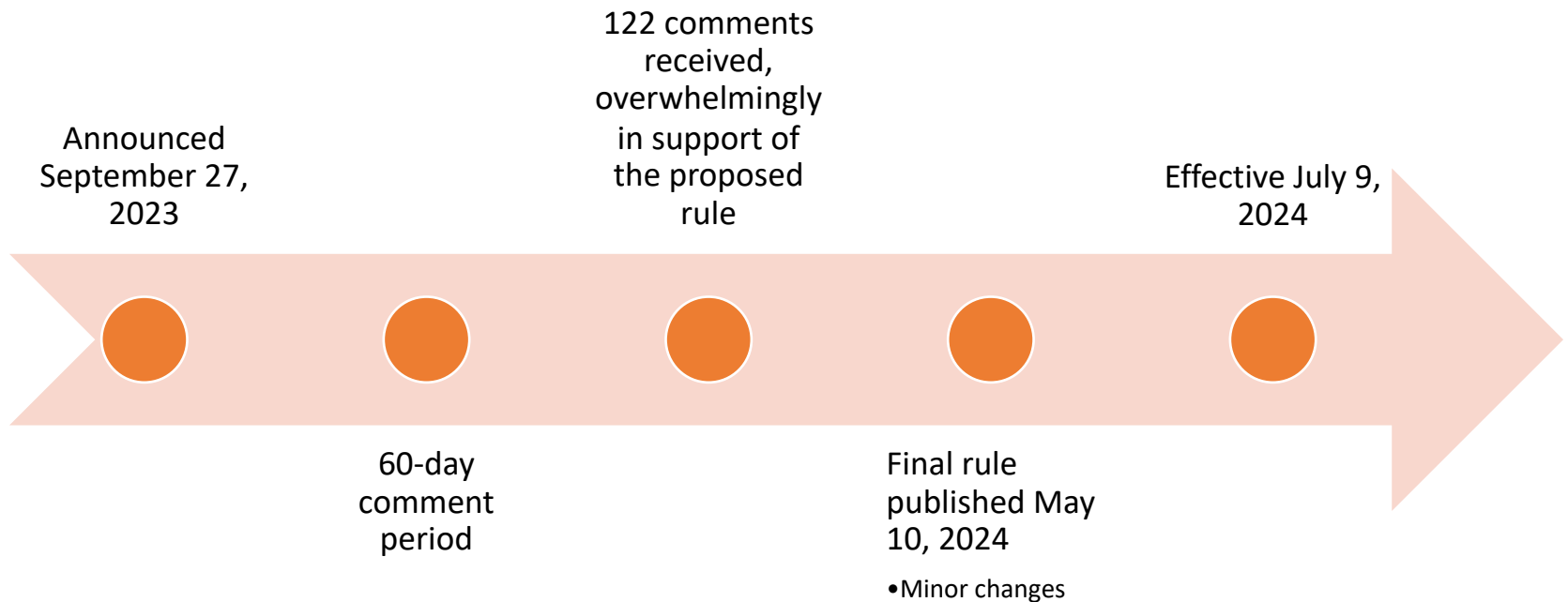


Building
Community



Advancing
Justice

Rulemaking Process



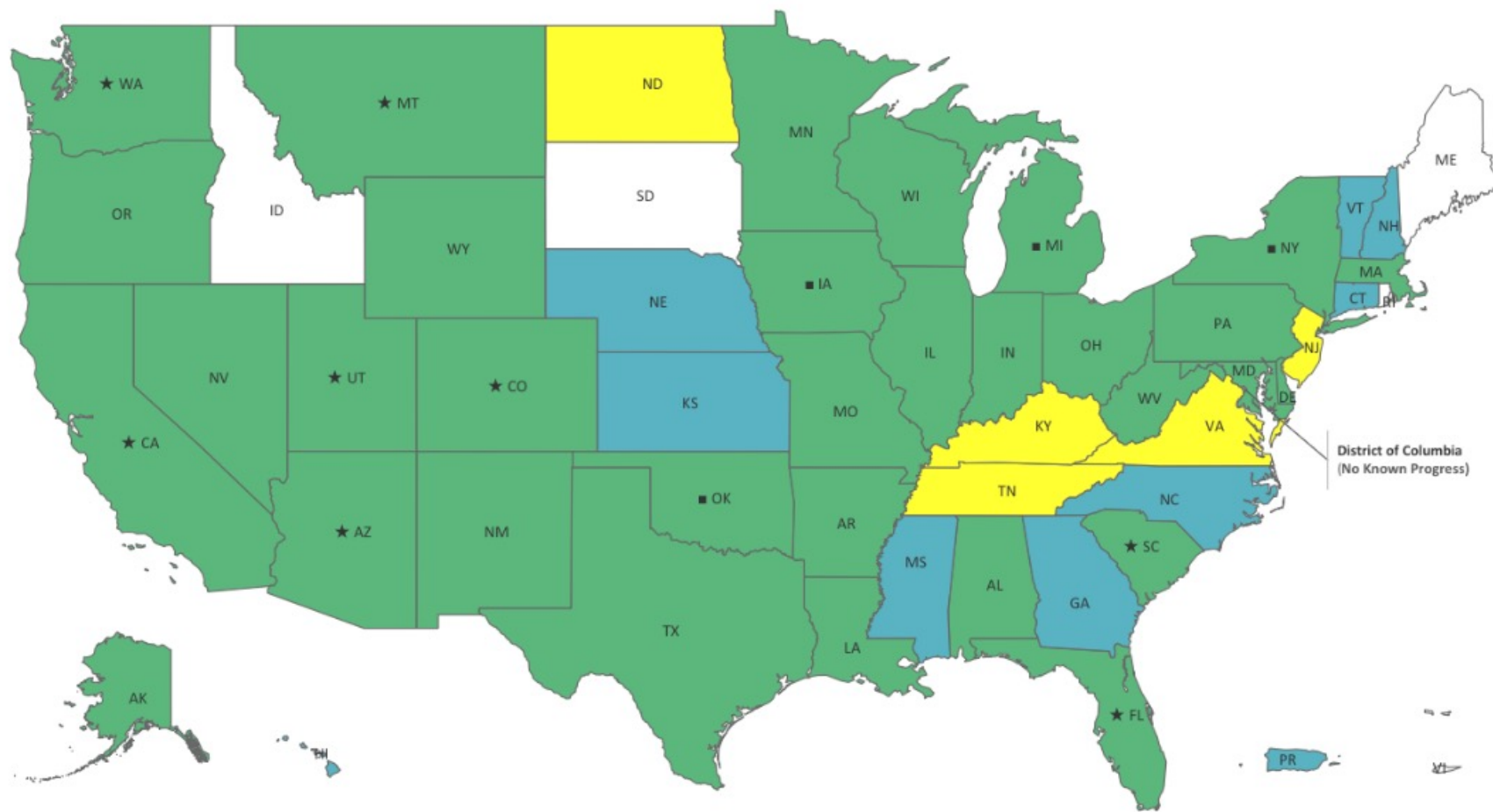


Finalized Rule

(45 CFR 1356.60)

- The NPRM codifies and expands the opportunity for Title IV-E funding for legal representation
- Codifies:
 - existing funding since January 2019
 - for independent legal representation for children and parents
 - Including multidisciplinary models

Claiming IV-E Funds for Attorneys for Children & Parents



Tribes Receiving IV-E

- Eastern Band of Cherokee
- Keweenaw Bay Indian
- Navajo Nation
- Penobscot Nation
- Salt River Tribe

Progress (as of 12/22/22)

- ☐ No Known Progress
☐ TA Requested
☐ In Process
☐ At least 1 site in the state is receiving funds; could also mean state-wide participation

Funds used to improve:

- ★ Child and Parent Representation
- Parent Representation

Disclaimer: This map is based on information from child welfare and judicial organizations. It may not reflect all available information.



Finalized Rule

(45 CFR 1356.60)

- Expands to:
 - Tribal representation in state court proceedings & “Indian custodians”
 - Relative caregiver legal representation
 - Pre-Petition/ Civil Legal Aid

Tribes



- Title IV-E matching funds are now available to support the legal representation of tribes
 - Intervening and/or participating in child welfare cases
- Tribes – and only tribes – may opt to use this funding for non-attorney representation
- Indian “custodians”



Relative Caregivers

- Title IV-E matching funds are now available to support the legal representation of relative caregivers
- Deference to states to determine when and how to implement
- Aligned with other recent HHS action for relative caregivers (ex. new licensure flexibilities)



Related Civil Legal Aid

- Title IV-E matching funds are now available to support
 - preventative civil legal aid for “candidates” for foster care
 - Post-removal civil legal aid
- Must be related to needs identified in the the child’s case plan
- Does not include criminal defense or immigration work

Candidacy



“A ‘candidate’ for title IV–E foster care is a child who is potentially eligible for title IV–E foster care maintenance payments and is at serious risk of removal from their home as evidenced by the title IV–E agency either pursuing the child’s removal from the home or making reasonable efforts to prevent such removal (section 472(i) of the Act).”

-



Did You Know?

State Administered Civil Legal Aid Federal Funding Opportunities

- Temporary Assistance for Needy Families
- The Victims of Crime Act (VOCA) Victim Assistance Formula Grants
- Social Services Block Grants
- State Opioid Response Grants
- STOP (Services, Training, Officers, and Prosecutors)
- Violence Against Women Formula Grant
- Substance Abuse Prevention and Treatment Block Grant
- Community Mental Health Services Block Grant



Independent Legal Representation

- “Not subject to control or influence by other parties, interested persons, nor the title IV–E agency.”
- “Independent legal representation in civil proceedings includes facilitating, arranging, brokering, advocating, or otherwise linking clients with providers and services as identified in the child’s case plan pursuant to sections 422, 471(a)(16), and 475 of the Act”
- States use form CB-496 for reporting



- High-quality legal representation is a necessary component of a functioning state child welfare system
- Backed by research
- Policy, funding and resources exist to help states get there.
- Bipartisan Agreement

How Can CIPs Promote Title IV-E for Legal Representation?



Educate Stakeholders



Convene Decision Makers



Link to your QLR and/or Joint Agency projects



Connect your state to peer states and TA providers



Nudge!



Resources

Summary Article

https://naccchildlaw.org/wp-content/uploads/2024/07/2024_4602_Feds-New-Rule-on-Foster-Care-Legal-Rep.pdf

HHS's Technical Assistance FAQ

https://www.acf.hhs.gov/sites/default/files/documents/cb/technical_bulletin_faq_legal_representation.pdf

HHS's Guidance: IM-21-06

<https://www.acf.hhs.gov/sites/default/files/documents/cb/im2106.pdf>

HHS's Guidance: IM-21-02

<https://www.acf.hhs.gov/sites/default/files/documents/cb/im2102.pdf>





www.NACCchildlaw.org



NACCchildlaw

Allison Green

Allison.Green@NACCchildlaw.org

NACC

National Association
of Counsel for Children



Promoting
Excellence



Building
Community



Advancing
Justice