



Child Welfare Legal Services Makes Some Improvements, But Other Changes Needed

at a glance

The Department of Children and Families has made improvements in Child Welfare Legal Services by reducing caseloads for Child Welfare Legal Services attorneys and adopting some national best practices. The department is taking preliminary steps to enhance professional development opportunities, establish a case management system, and implement a quality management system for Child Welfare Legal Services attorneys. However, the department has not yet finished addressing these recommendations.

Scope

In accordance with state law, this progress report informs the Legislature of actions taken by the Department of Children and Families in response to a 2004 OPPAGA report.^{1,2} This report presents our assessment of the extent to which the department has addressed the findings and recommendations included in our prior report.

Background

The Department of Children and Families uses Child Welfare Legal Services attorneys for a wide range of services in the dependency process. These attorneys provide legal advice to child welfare investigators, caseworkers, and administrators, and prepare and sign all legal documents. The attorneys also represent the department in court proceedings conducted under Ch. 39, *Florida Statutes*.

The Department of Children and Families uses in-house attorneys to provide child welfare legal services in the majority of counties and judicial circuits. However, the department contracts with the state attorney for Pinellas and Pasco counties to provide child welfare legal services for the 6th Judicial Circuit. It also contracts with the Office of the Attorney General to provide these services in Hillsborough, Manatee, and Broward counties (the 12th, 13th, and 17th judicial circuits). A total of 315 attorneys comprise the Child Welfare Legal Services attorneys handling dependency cases statewide.³

The department allocated Child Welfare Legal Services \$40.2 million in Fiscal Year 2005-06. About half (48%) of these funds are from state sources while the remaining 52% are federal funds.

¹ Section 11.51(6), *F.S.*

² *Child Welfare Legal Services Should Be Provided by DCF or Private Law Firms*, [OPPAGA Report No. 04-05](#), January 2004.

³ These staff include 224 Department of Children and Families in-house attorneys and 91 attorneys in the offices of the state attorney and the Attorney General, and do not include supervisory or paraprofessional staff.

Current Status ---

The department has retained responsibility for child welfare legal services

As directed by the Legislature, our 2004 report examined the feasibility of various options for providing the Child Welfare Legal Services function. We concluded that it was not feasible to transfer this function to the Attorney General or the state attorneys as it would be inconsistent with their core missions, and such a transfer was opposed by these entities. We also concluded that contracting with the community-based care lead agencies that provide child welfare services would not be desirable as it would create a conflict of interest; the attorneys must represent the state in legal issues but would be reporting to a separate entity. We concluded that outsourcing these services by contracting with private law firms was feasible; however, substantial planning and careful implementation would be required to ensure that such an effort was successful.

To date, the Legislature has not directed the department to further outsource child welfare legal services to private law firms.⁴ Thus, the department has retained responsibility for this function, although it has contracted for some additional legal services to supplement its in-house attorneys, as discussed below.

The department has reduced attorney caseloads and taken preliminary steps to address professional development and the program's accountability system

Our 2004 report concluded that the department needed to address ongoing problems with high caseloads for its in-house attorneys, limited professional development for these staff, and a weak accountability system for this function. The department has made progress in addressing caseloads and professional development, but accountability for this function remains problematic.

The department has reduced caseloads of child welfare attorneys and is working on initiatives for further reductions. Our 2004 report noted that attorney caseloads averaged 122 cases per attorney in Fiscal Year 2002-03, which was more than double the recommended standard of 40 to 50 active cases.⁵ To address this problem, the department has allocated over \$2 million each fiscal year since 2003-04 for contracted legal services to offset caseload increases. The department has used these funds to contract with private attorneys and paralegals who work with district child welfare legal services staff. In Fiscal Year 2004-05, the average Child Welfare Legal Services caseload was 92 cases, which was lower than the Fiscal Year 2002-03 level but still exceeded the recommended caseload standard.⁶

The department is working on two initiatives to reduce caseloads further.⁷ First, the department is developing an appellate unit that will be managed from the central office with attorneys posted in the districts to handle appeals. This will relieve Child Welfare Legal Services attorneys from ongoing involvement in appeal hearings. Second, the department has developed a reallocation model for attorneys and paralegal positions to better balance the number of legal staff with the number of dependency cases in each district. The department is phasing in this model over two years beginning in Fiscal Year 2005-06.

The department has taken preliminary steps to enhance attorney professional development. Our 2004 report recommended several in-service training enhancements for Child Welfare Legal Services attorneys, including interdisciplinary training, seminars and training events in child welfare legal services, and training on general legal topics. We also recommended that the department make Continuing Legal Education

⁴ Chapter 2003-146, *Laws of Florida*, directs the department to maintain its current delivery system for the provision of child welfare legal unless otherwise directed by the Legislature.

⁵ Our 2004 report noted that the department also had high turnover of attorney positions (up to 75% in some districts). We were not able to obtain data to assess whether attorney retention rates have improved since our prior report, as the state's human resource data system (PeopleFirst) currently cannot provide agencies with employee turnover and vacancy data.

⁶ The caseload average is based on the number of Child Welfare Legal Services attorneys positions (i.e., managing attorney, senior attorney, and attorney) and vacant positions, while the caseload standard recommended by the American Bar Association is based on the number of new cases per attorney per year rather than open cases.

⁷ These initiatives relate only to the department's in-house child welfare attorneys.

credits more cost- and time-efficient for attorneys to earn.⁸

The department has taken steps to address these recommendations by establishing a Child Welfare Legal Services Training Committee in 2004. The committee is charged with creating training and job aids for child welfare legal services attorneys. The committee's projects are in the preliminary stages of development and include

- creating a statewide legal website to provide resources for attorneys and paralegals, such as case law summaries, lists of expert witnesses and legal experts, and links to federal and state statutes;
- producing training videos for distribution to Child Welfare Legal Services attorneys; attorneys will earn Continuing Legal Education credits for viewing the videos;
- developing online training on selected topics through the department's Skillnet website; and
- creating a desk manual for self-guided field training for new Child Welfare Legal Services attorneys.

The department's Office of the General Counsel will receive funding from the child welfare training fund to support the committee's projects and related staff development needs for Fiscal Year 2005-06. This funding will support developing the legal website, producing training videos, purchasing computer equipment and software to access online training, and purchasing legal books and publications. The funds also will be used to increase the number of Child Welfare Legal Services attorneys attending conferences and Florida Bar training, for which the attorneys can earn Continuing Legal Education credits.

The department has taken preliminary steps to improve its accountability system for Child Welfare Legal Services attorneys. In our prior report, we noted two key weaknesses in the accountability system for child welfare legal services. First, the department lacked a statewide,

automated case management system for child welfare legal services attorneys to track cases and ensure that case processing time requirements were met. As a result, reliable Child Welfare Legal Services performance data was not routinely collected and reported. Second, the department lacked a quality assurance monitoring program to help ensure the quality of legal representation by attorneys.

To partially address these concerns, the department's Office of the General Counsel has begun requiring child welfare managing attorneys to submit monthly performance data reports on critical federal and state case processing timeliness measures. While a positive initial step, the manual collection and reporting of this information is inefficient, hinders reliability, and limits the department's ability to analyze this information.

To address the lack of a case tracing system for attorneys, department officials report that the Judicial Case Management Information System (JCMIS) will provide the program with automated case tracking capabilities, but this solution will not be available in the near future. JCMIS is being developed and implemented by the Office of the State Court Administrator; Child Welfare Legal Services attorneys are to have access to the system when it becomes operational.⁹ JCMIS is a web-based system that can be populated with demographic information from the department's HomeSafenet child welfare information system. This system will provide Child Welfare Legal Services attorneys with functions including case time requirement monitoring, appointment scheduling, ad hoc and generic reports, case outcomes tracking, and automated form generation.

JCMIS is still being pilot tested by the Office of the State Court Administrator and the department will need to develop and fund its modules for the system. Department officials do not have an estimated timeframe for statewide Child Welfare Legal Services participation in the new system;

⁸ The department continues to offer child welfare legal services attorneys several internal training opportunities, such as semi-annual training for department attorneys, monthly conference calls on case law, and the annual Dependency Court Improvement Summit for a limited number of attorneys. The monthly conference calls and Dependency Court Improvement Summit provide attorneys with continuing legal education credits.

⁹ The Department of Children and Families has provided funding for programming and training costs for JCMIS.

however, four judicial circuits will be operational by December 2005. To provide child welfare legal services attorneys with a case management system to track cases and performance data, the department plans to implement an interim system developed by the Office of the Attorney General. Department officials report that they will pilot test the interim case management system in 11 counties by October 2005.

The department has not implemented our recommendation to develop a quality assurance program for Child Welfare Legal Services attorneys. However, the department is developing a quality management system that includes a quality assurance component for its core and support processes, including child welfare legal services. Child Welfare Legal Services attorneys will participate in quality improvement teams with other department staff and partners. The quality management system is scheduled to begin in October 2005.

The department has adopted several best practices for child welfare legal services

Our 2004 report recommended that the department adopt several nationally recognized best practices for Child Welfare Legal Services. The department made various changes to adopt the best practices.

- In March 2004, the Office of the General Counsel sent a memorandum to child welfare legal services offices formally implementing continuity of representation. The memorandum emphasized that in no case should Child Welfare Legal Services offices maintain a system in which different attorneys handle different aspects of a dependency case.

- Although the department no longer requires Child Welfare Legal Services attorneys to be colocated with investigators and caseworkers due to the outsourcing of child welfare services, the general counsel has directed Child Welfare Legal Services attorneys to maintain regular office hours at community-based child welfare agencies.
- The department now requires all new Child Welfare Legal Services attorneys to attend child welfare pre-service training with investigators and caseworkers. In addition, the interrelationship among these attorneys, investigators, and caseworkers will be a component of the new child welfare training being designed.
- The department adopted the American Bar Association's caseload standards of 40 to 50 active cases per child welfare attorney as its goal and focused its attorney reallocation model on reducing caseload size without additional positions.
- Department officials considered but did not adopt the American Bar Association's Standards of Practice for Lawyers Representing Child Welfare Agencies. However, the department has incorporated statutory standards for dependency cases as the basis of gauging attorney performance.

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