

**FREQUENTLY ASKED QUESTIONS – IMPLEMENTATION OF SB 1036
EXTENSION OF FOSTER CARE
August 23, 2013**

These FAQs are in draft form. The Department welcomes your comments and suggestions. Please note that the policies set forth in this FAQ have been developed with the legislatively mandated focus on “Common Sense and Compassion.” Chapter 65C-41, F.A.C. will establish by rule further guidance on each of the issues addressed herein.

Acronyms:

EFC: Extended Foster Care

PESS: Postsecondary Education Supports and Services

SSA: Social Security Administration

YA: Young Adult

GRANDFATHERING

Question: Are all current participants in any of the existing IL programs (pre-2014) grandfathered in?

Answer: Yes.

Question: Can a YA who is grandfathered into RTI enroll simultaneously in Extended Foster Care in January, or thereafter?

Answer: A Young Adult who is grandfathered in under a former program may apply for services through the 2014 programs. If the YA elects to enroll in any of the new programs, i.e., EFC or PESS, they will forfeit the benefits of the former program and refer to the new program’s policies and procedures with regard to available benefits and eligibility requirements. For example: A student 18-20 years old enrolled in the former Road to Independence program elects to enroll in EFC. This is possible, though the YA will forfeit their current direct payment and begin to receive benefits available through EFC. If the YA meets eligibility requirements for Postsecondary Education Supports and Services (PESS) they can apply for the benefits available through that program while simultaneously enrolled in EFC. This option would allow the YA to remain in foster care while receiving a PESS payment, a portion of which may be paid directly to the YA, depending on their specific living arrangement. See §409.1451(2)(b)1-7, Fla. Stat. (2013).

Question: Will the needs assessments continue?

Answer: Yes, needs assessments will be done annually and during the summer months for young adults who wish to remain in the pre-2014 RTI program until the youth is terminated from that program. All current Rules in 65C-31, F.A.C. continue to apply to grandfathered youth.

EXTENDED FOSTER CARE

CUSTODY

Question: When a YA remains in care after the 18th birthday, or returns to care at any time prior to age 21, is that YA in the custody of the State, of DCF, or of the CBC?

Answer: No, the Young Adult is not in the custody of DCF or the CBC. Although § 39.6251(1), F.S. defines a young adult as a “child”, the statute very deliberately states that this is “as used in this section.” Once a child becomes an adult at age 18, absent criminal justice or mental health intervention, or the establishment of a guardianship in probate court, that adult has no restrictions on his or her liberty. See § 743.07, Fla.Stat. (2013). See also Art. I, §§ 2, 23, Fla. Const.

ELIGIBILITY

Question: Is the intent to allow YAs to participate in EFC who have only been in licensed foster care for one day?

Answer: As long as the YA was residing in licensed care on his/her 18th birthday, even if only for one day, they would be eligible to participate in EFC. § 39.6251, F.S. (2013). Moreover, the child does not have to be adjudicated dependent; therefore, a child in shelter care on his/her 18th birthday would also qualify for EFC.

Question: Can you clarify EFC eligibility for YAs who turned 18 while on runaway status, in a DJJ facility, or in a Dept. of Correction’s facility, etc.?

Answer: As long as the YA lived in licensed foster care immediately prior to physically leaving licensed foster care, he or she will still qualify for EFC. The child was in the legal custody of the State on the 18th birthday, even though under the physical control of another agency, etc.

Question: Can a YA qualify for EFC if they are participating in a vocation/technical program that does not lead to a high school diploma or GED, such as an apprentice program?

Answer: Yes, this is considered a “program or activity designed to promote or eliminate barriers to employment.” See §39.6251(2)(c), Fla. Stat. (2013).

Question: Can a YA drop out of high school/GED program for employment and still be eligible for EFC?

Answer: Yes, YAs are permitted to change their qualifying activities and remain in EFC until the age of 21 [22 if disabled]. The YA must be employed for a minimum of 80 hours monthly to remain eligible. See §39.6251(2)(d), Fla. Stat. (2013).

Question: Will “self-employment” be a qualifying activity for EFC eligibility?

Answer: Yes. 65C-41, F.A.C. will include standards for documenting proof of qualifying self-employment activity.

Question: What constitutes a “documented disability” to be able to remain in EFC until the 22nd birthday?

Answer: Rule 65C-41 will clarify that a “documented disability” refers to a disability established and confirmed by a medical provider. The standard to consider will be whether the additional year is necessary or helpful to the YA’s progress toward independent living.

Question: What is the standard used to determine whether a YA remains eligible to remain in EFC despite being unable to participate in the school, work, or other qualifying programs or activities full time due to a physical, intellectual, emotional, or psychiatric condition that limits participation.

Answer: Rule 65C-41 will clarify the standard; however, as stated in statute, the disability must affect the YA’s “ability to perform one or more life activities.” This disability may be either temporary or permanent: e.g., if a young woman is prescribed bed rest for a pregnancy, or a YA has an injury that prevents any participation on a temporary basis. See §39.6251(2)(e), Fla. Stat. (2013).

LIVING ARRANGEMENTS/PERMANENCY

Question: If a child who wishes to return home to his or her parents from which they were removed [or legal guardians] after their 18th birthday, are they still eligible for EFC?

Answer: If the YA lives with a removal parent as the actual living arrangement, as opposed to a temporary visit, the YA would not qualify for EFC; however, if the YA later returns from living with the removal parent, the YA may apply for re-entry to EFC.

Question: Provide clarity and guidance on what defines court approved “supervised living arrangement.”

Answer: These living arrangements must allow the young adult to live independently but with supervision, case management and supportive services. The environment must offer both freedom and responsibility. Before the living environment may be approved by a CBC, the agency must ensure that the living environment provides the young adult with all of requirements set forth in Section 39.6251(4)(b), Florida Statutes (2013), e.g. counseling, life skills instruction, educational support, etc. Further requirements will be established in Rule 65C-41.

Question: What constitutes permanency to disqualify a YA from EFC?

Answer: Marriage, adoption. As stated above, returning to a parent as the actual living arrangement also disqualifies the YA from EFC, but in this instance we will permit entry upon a return, or re-entry. Further qualifications and eligibility requirements will be established in Rule 65C-41.

Question: Will there be a “bed hold” for YAs who temporarily leave their approved living arrangement? If so, who gets the money when a YA is temporarily away?

Answer: There will be a “grace period” established in 65C-41, F.A.C. for YA who temporarily leave their approved living arrangement. It will provide guidance for determining when a YA’s absence constitutes abandonment of the program. During the “grace period” the home will be paid the board payment and the YA will be permitted to return.

CASE MANAGEMENT:

Question: Will youth in EFC have visitation plans with the individuals responsible for their care at the time of removal?

Answer: No party can demand visitation with an adult. The YA may choose to visit their caretakers at the time of their removal. If visitation is included the YA's court-approved transition plan, case management has an obligation to assist the YA in achieving visitation.

Question: For YAs in EFC residing outside a licensed foster home, is there authority for case management to enter the supervised living environment and observe the setting to evaluate whether it is appropriate?

Answer: Yes, authority will be included in 65C-41, F.A.C. See also Rule 65C-30.007(5), F.A.C. regarding contact at current location/residence.

TRANSITION PLANNING:

Question: Does § 39.6035, F.S., require a transition plan for all youth, regardless of the type of out-of-home placement?

Answer: Yes. The statute does not limit the transition plan requirement to any one particular type of out-of-home placement. A transition plan is also required by the federal Fostering Connections to Success Act.

JUDICIAL REVIEW HEARINGS

Question: When should we schedule Judicial Review hearings for youth in care who will turn 18 within the first 6 months of 2014? Since they may not yet be clear as to whether they will remain in EFC, should we schedule the next JR for the first half of 2014?

Answer: Judicial Reviews should continue as scheduled, and arranged to occur several weeks before the child's 18th birthday regardless of the time passed since the most recent Judicial Review, in order to address the child's desire to remain in foster care after turning 18.

AUTHORITY OF FOSTER PARENTS FOR YA IN EFC

Question: What is the "supervision" level/relationship between the foster parent and the YA? i.e. House rules versus independence.

Answer: Supervision level should always be decided on an individual basis, whether the YA resides in a foster home or some other type of residential setting.

Section 39.6251(4)(b)1, Florida Statutes (2013) provides, “the young adult will be provided with a level of supervision consistent with his or her individual education, health care needs, permanency plan, and independent living goals as assessed by the department or lead agency with input from the young adult. Twenty-four hour onsite supervision is not required; however, 24-hour crisis intervention and support must be available.”

PAYMENTS

Question: If a foster parent does not provide the YA life-skills training, but is the only placement option, is the board payment reduced?

Answer: Life-skills training is mandatory for youth 13 – 17 and EFC YAs. If a FP refuses to provide life skills to a youth or YA in their care, this is an inappropriate placement. If the foster parent is willing to provide life-skills training but lacks the necessary skills to do so, the CBC must partner with QPI to provide the foster parent with the training and support needed to ensure that the youth or YA in their care are provided the mandated life skills training. If this is not feasible, and the CBC chooses to continue the placement, the CBC must arrange to have life skill services provided outside the home by another means. See §§409.145(2)(a)8; 409.145 (4)(d); 409.1451^{FN1}, Fla. Stat. (2013).

PAYMENT START DATES:

Question: If a YA is eligible for EFC only one day of the month, are they eligible for an entire month’s payment?

Answer: For a YA turning 18 and remaining in care, IV-E pays for the entire month in which the 18th birthday occurs. The payment will switch to General Revenue dollars at the beginning of the next month. For returning YAs, if the return to EFC occurs after the 1st of the month, the board rate should be pro-rated, with a pro-ration of any allowance paid the YA.

Question: Who pays for the utilities when a YA lives outside of a licensed home (family or group)?

Answer: The CBC is responsible for paying the YA’s living expenses, which includes necessary utilities. 65C-41, F.A.C. will address definitions related to “living expenses,” including “reasonable” utility usage, cellular phones, deposits, etc.

Question: How will the YA’s utilities be paid considering that EFC payment is received at the beginning of month but utilities are paid at the end of the month?

Answer: The CBC should negotiate with the utility company for an even payment plan based on averages for that location. Most utility companies provide this service.

Question: Will group homes agree to accept or continue to house YAs in EFC at a rate lower than their traditional monthly board rate for children under 18?

Answer: CBC must negotiate board rates for YA in EFC. Section 409.145 (4), Florida Statutes, addresses foster parent “room and board” rates; however, the statute is silent on the issue of group home board rates. The PESS \$1256 payment is not related to a room and board rate requirement.

Allowance issues –

Question: Who is responsible for paying for a YA’s personal expenses for things such as clothing, entertainment activities, transportation, etc.?

Answer: The CBC should provide a “personal allowance” to the YA, in addition to paying their housing and utilities directly. This allowance must be sufficient enough to provide the YA the ability to secure transportation, learn to manage finances, etc. 65C-41, F.A.C. will provide guidance for defining a “sufficient” personal allowance and which criteria should be considered in making that determination. See §409.1451^{FN1}, Fla. Stat. (2013).

Question: Without Aftercare funding, how will YAs in EFC obtain the funds needed for the costs associated with moving from a foster home to a semi-supervised housing arrangement, e.g., apartment? What about deposits and securities?

Answer: The CBC will need to make these arrangements and educate the YAs on how the process works for use in the future. Rule 65C-41 will provide guidance on living arrangements and operating procedure will discuss how to engage in “master leasing” to reduce housing costs.

Question: How much money will YA living outside of a foster or group home receive monthly for living expenses?

Answer: This question will be addressed with all stakeholders during the rulemaking process and will appear in 65C-41, F.A.C. The YA should be educated about available public benefits and community resources to which they may be entitled or eligible to receive.

PARENTING TEENS

Question: Does the child of a YA in foster home count towards the foster home's capacity?

Answer: The child does not directly count against the foster home's capacity; however, since the YA's child takes up room in the house this will indirectly impact the home's physical capacity. Therefore, Licensing will need to reassess the number of children approved for licensed care in that foster home.

Question: Will nuclear families with both parents aging out of foster care be permitted to be placed together in the same home with their child?

Answer: If both parents are eligible for EFC and agree to cohabitate, case management must discuss with the YAs whether living together is healthy for both parents and the child, i.e. whether there has been a history of any abuse, domestic violence, drug use, sexual exploitation, etc. Paternity must be established and the parents must agree to participate in family counseling and parenting classes. This policy is consistent with the Department's mission to build strong families and the Legislature's recognition "that most families desire to be competent caregivers and providers for their children and that children achieve their greatest potential when families are able to support and nurture the growth and development of their children." See §39.001(1)(b), Fla. Stat. (2013).

Question: Who is responsible for meeting the needs of the child of a YA in EFC?

Answer: Rule 65C-28.010(2) provides an enhancement to the board rate when a dependent child has custody of his or her own non-dependent child. IV-E funds can be used for this purpose, as prevention for the YA's child. Additionally, the YA would be eligible for TANF benefits, subject to the 5-year lifetime eligibility limitation.

LICENSING

Question: When a youth turns 18 and enters EFC while living in a group home or in foster care, do they have to move to another sleeping arrangement if they share a room with a minor?

Answer: If the YA remains in the same living arrangement, whether it be a licensed foster home or group home, they do not have to move to a different sleeping arrangement. This exception does not apply to any new placements of 18⁺ YAs in the home. Rule 65C-13, F.A.C. currently allows youth who turn 18 while living in licensed foster care to remain in the same sleeping arrangement. A similar provision will be included in Rule 65C-14, F.A.C. – the group home rule.

65C-13

(5) Physical Environment.

(g) Sleeping Arrangements.

12. Children over the age of twelve months shall not share a bedroom with an adult. *The only exception to this would be if one of the children sharing a bedroom reaches his or her eighteenth birthday and the out-of-home caregiver and the supervising agency approve this sleeping arrangement.* This exception applies only to the circumstances described above and not to any new placements in the home.

Question: Should we discourage, either in Rule or OP, placing a YA with under-18 children?

Answer: If the YA has remained in the foster home upon turning 18, with no break in service, the YA should be able to remain in the family foster home or group home, if he or she so desires. For a re-entry, unless the YA will be living with a sibling group, that will be the CBCs decision.

Question: Does the young adult who remains in a foster home after turning 18, whether in EFC or voluntarily, affect licensing capacity?

Answer: Not directly. The YA is considered another adult household member. Adding any adult to the household may affect the home's license, including its licensing capacity.

Question: Will the new licensing rule establish a process for criminal checks and processing results on youth that opt back in?

Answer: Statute does not treat criminal history as a disqualifier from either EFC or PESS. Even if criminal background precludes a YA from living in a specific type of living arrangement, it would not preclude the YA from living alone in an apartment.

Rule 65C-13.023(5), F.A.C., for foster homes does not require background screening for any YA when there has been no break in services provided. If a YA requests re-entry and will be living independently, a criminal history check is unnecessary. A landlord may require such a check, but the Department would not require it. Language similar to 65C-13 will be included in Rule 65C-14 for group care.

65C-13.023

(6) The background screenings under this section shall ensure that no out-of-home caregiver licensed by the department and no person residing in a family foster home has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to any offense prohibited under Section 435.04, F.S., or similar statutes of another jurisdiction at any time. **When the individual who is being screened is a former dependent child under 23 years of age and the security background screening reveals a disqualifying offense which was committed during or prior to the time that the child was dependent, that offense shall not automatically affect the licensure of the out-of-home caregivers.** Exemptions for disqualifying offenses may be sought under Section 435.07, F.S.

Question: Will case managers for YAs be required to have child welfare certification?

Answer: Although certification is preferred for counselors working with YAs on PESS, ETV or Aftercare funding, it will not be required at this time.

Master Trust

Question: Will we continue to be the representative payee for any social security benefits received by a YA in EFC? Can we continue to deduct cost of care?

Answer: This question has been sent to the Office of General Counsel for a legal opinion.

Adult Adoptions and Parental Notification

Q: What kind of notice must the YA give to his or her parents upon an adoption of the YA as an adult?

Answer: Florida law permits an adult to be adopted by another adult. Because of the adoptee's status as an adult, there is no need to secure the consent of the adoptee's parents. However, Florida Statutes do require that the parents be notified of the adoption. [If the parental rights of the adoptee's parents have been terminated during the adoptee's childhood, then there are no parents to be notified, so this notification provision does not apply.]

Section 63.062(8)(b), Florida Statutes, requires that the parents of the adult adoptee be notified in one of two ways: either the parents can be served with the Petition to Adopt, or the parents must be provided written notice of the final hearing on the adoption petition. This notice is primarily a formality, as the parents are having

their familial rights severed, which includes rights to inherit from the child, and for the child to inherit from them. There is no requirement that the adoptee have a conversation with the legal parent, although the parent may seek such a conversation once notified of the adoption, either by service of process of the petition, or of the notice of the final hearing.

It is unclear what can occur in court if the legal parent attends the court hearing. There is only one Florida appellate decision concerning an adult adoption. In that case, the trial court denied the adoption on public policy grounds. The adoption petitioner simply argued that the trial court does not have the discretion under the statute to deny the petition for adoption, and the 5th District Court of Appeal agreed. [Holland In re: the Adoption, 965 So. 2d 1213 (Fla. 5th DCA 2007)]

In any adult adoption, it is important to note that the adoption will also sever all other legal family relationships of the adoptee, including legal sibling relationships.

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