



Placements to Obtain Treatment and Services for Children

John's Mom's Voice

The day that my husband and I signed the custody of our child over to the Department of Health and Human Resources (DHHR) was the worst day of my life. I felt like I was giving up on my child and that he would never love me again. I remember crying for days and shutting down from the outside world. John needed residential treatment, and in our state to get help with paying for residential placement, you have to relinquish physical custody to DHHR. Although I had a Medicaid card that would pay for John's treatment, in our state it would not pay for a bed for him to sleep in or for the supervision he needed. It did not cover room and board.

A lot of things led up to this point. John was let down by a teacher he had looked up to, the trust factor was taken from him. He was caught smoking on school property. This led to suspension and a court appearance. Then he was talked into taking vodka to school for some upperclassmen. After he gave it to them, they gave it to the resource officer who in turn arrested John for having alcohol on the school premises. This meant another suspension and court appearance. One thing led to another. I will never forget the day I received a call from the vice principal of the high school asking if John had taken a set of speakers from the school. I went to my son's room and found the speakers. I knew that if I lied about finding them, I would not be helping my son. But if I told the truth, he would be in trouble with the law.

I told the truth and was faced with a choice—to allow the school to pursue charges against John or to seek treatment for him in a residential

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setting. We decided to ask for residential treatment, but I didn't realize at that time that I would have to sign over custody to achieve this. After days of talking with John's therapist, we decided that placing John would be the best option. I agonized over this for a week and really felt like I had done my child wrong. If it had not been for the support system (friends, neighbors, family) that I built around me, I don't think I would have survived.

When my son was first placed in residential care, the facility where he stayed passed information about him to me through the agency worker at DHHR, even though I had a working relationship with staff at the facility. They needed to gauge the level we were willing to be involved. When they realized that we wanted to be as involved as it took to ensure that our son would survive this, they began calling me directly.

My son helped me get through this tough time. He told me each time I talked with him that he was glad that I had made the decision, and he began to see how much he needed to improve. Now he tells me that if I had not made the decision to place him, he would be in prison right now. Instead, he is in his first year of community college.

Do children who have not been abused or neglected, but who need treatment services, ever get placed in the child welfare system?

Yes. This might occur when families can no longer pay for or get adequate services and supports in their own communities for their children who may have serious emotional or behavioral disturbances, developmental disabilities, physical disabilities, or other treatment needs.

When children are placed in the child welfare system, the state is responsible for finding and paying for services they need. In desperation, some families feel forced to turn to the child welfare system for help.

Is it okay to place children in foster care for these reasons?

Many people believe that this is **not** okay. Some members of the United States Congress were so concerned about this that they asked the General Accounting Office (GAO) to find out why this happens. They also wanted to know how many children are placed in the child welfare or juvenile justice systems to get mental health services. The GAO study took place in 2002. It showed that at least 12,700 children in the United States (and probably more) come into the child welfare system or juvenile justice system to get mental health services.

Are there some other ways to get treatment services for my child?

Yes. There are several possible ways. You can seek services through your local mental health system. If your child needs intensive mental health services, ask a mental health provider or case manager to help you find services without placing him in the child welfare system. Some communities have systems of care that serve children with serious mental health needs. (See Section 10, page 94 & 95 for more information.)

Can Medicaid be used to help get mental health services for my child?

Yes. Even though in John's state (see John's Mom's Voice on page 57), Medicaid did not cover all the costs of residential care; in some states, it does. Medicaid also can be used to pay for community-based services to help keep children in their homes, instead of being placed in institutions. There are two federal programs that allow states to use Medicaid for community-based services for children with mental or physical disabilities, *even if their family's income is too high to be eligible for Medicaid.*

These programs are called (1) the TEFRA Option (sometimes known as the Katie Beckett Option) and (2) a home- and community-based services waiver. (See *Terms You May Want to Know* for more information.) The problem is that not enough states have chosen these options. So far, nine states have the TEFRA Option for children with mental and emotional disorders. Only three states have the home- and community-based waiver for children with serious emotional disorders.³

What can we do if our family is not eligible for Medicaid?

Even if your family is not eligible for Medicaid, your child might be. If a child has a disability or a very difficult mental health problem, in some states he can become eligible for Medicaid based on his own need for services, instead of on the amount of his family's income.

³Three documents that may be useful for families faced with the challenge of finding mental health services for their children without placing them in the child welfare system include (1) *Staying Together—Preventing Custody Relinquishment for Children's Access to Mental Health Services: A Guide for Family Advocates*, (2) *Relinquishing Custody—The Tragic Result of Failure to Meet Children's Mental Health Needs*, and (3) *Avoiding Cruel Choices—A Guide for Policymakers and Family Organizations on Medicaid's Role in Preventing Custody Relinquishment*. All three are available at www.bazelon.org.

What would happen if I felt that I had to place my child to get treatment services for him?

It would depend upon what state you live in. States respond to families in this situation differently. There are several possible options:

- **Option A**—Some states would not allow you to place your child in foster care to get treatment services. They would redirect you to services in the community (if they are available).
- **Option B**—Other states would allow you to sign a voluntary placement agreement with the child welfare agency. This gives the agency responsibility for immediate care of your child. It does *not* transfer your child's *legal* custody to the child welfare system. After 180 days, the voluntary placement agreement must be approved by the court (see the next question for more information).
- **Option C**—In some other states, if you place your child in the foster care system, you would have to relinquish custody through a court process. This happens even if the placement is to get treatment and not because of abuse or neglect. In these states, you might be asked to file neglect charges against yourself. You might be asked to declare that your child is “in need of services,” or you might have to claim that your child is unmanageable and faces possible abuse in your own home.

Do *Federal* laws require parents to relinquish custody to get out-of-home placement services for their children?

No. Federal law does not require parents to give up their parental rights or transfer custody to place their children with a child welfare agency. It includes specific language that allows *voluntary placements* (Option B above). Federal funding can be used for foster care payments for up to 180 days under a voluntary placement agreement. If your child needs to remain in foster care longer than 180 days, federal law says that the court must get involved. The court must decide that remaining in out-of-home care is in your child's best interests. But the court is *not* required to transfer your child's custody to the child welfare agency.

Do *State* or *Local* agencies require parents to relinquish custody to access out-of-home placement services?

Yes. *Some* states and *some* local agencies do require this, even though it is not required under federal law.

If my child is placed just to get treatment services, would the federal laws about termination of parental rights apply?

Yes. If the agency has custody of your child, the same requirements apply. *However*, there is protection under the law for you and your child. As mentioned earlier, states *do not* have to pursue termination of parental rights “at 15 of the most recent 22 months” if “there is a compelling reason why terminating parental rights would not be in the best interest of the child.” States may ask the court for permission to not pursue termination of parental rights. If it is in your child’s best interest to remain in treatment for a while longer, and you remain committed to your child, the state does *not* have to pursue termination of parental rights.

If I placed my child voluntarily, would I be able to bring him home at any time, even if the agency worker or court does not recommend this?

This depends upon the terms of the voluntary placement agreement that you signed. It is important for the agreement to say how, when, and under what circumstances you will be able to bring your child home. It should include the right to cancel the agreement after giving proper notice to the child welfare agency.

When your child is placed with the child welfare agency, the agency has responsibility for, and is very interested in, his care. It is possible that you and the agency will not agree about the best placement and care for your child. For example, if you decide to bring your child home, and the agency believes that this would interfere with your child’s safety, it has the right to ask the court to intervene. You also have the right to explain to the court why your child’s safety would not be in jeopardy if he came home.

Practical Tips for Families

- ✓ If you sign a voluntary placement agreement when your child enters foster care, be sure that it clearly explains your rights as a parent:
 - to be consulted on decisions about your child’s care and placement
 - to visit your child
 - to voluntarily cancel the agreement
- ✓ Consider reviewing your voluntary placement agreement with a lawyer before signing it.
- ✓ Keep a written copy of the voluntary placement agreement. If English is not your first language, you can ask to have the agreement translated to your language or have an interpreter present.
- ✓ You can call the Medicaid office in your state to find out if your child can qualify for Medicaid on his own.
- ✓ You can also ask the state Medicaid office if your state has one or both of the two federal Medicaid programs that allow for community-based services instead of placing children in institutions. (See p. 59 and *Terms You May Want to Know* for more information.)

