Court Implementation of the NEW Bridge to Independence Program

Through the Eyes of the Child Initiative

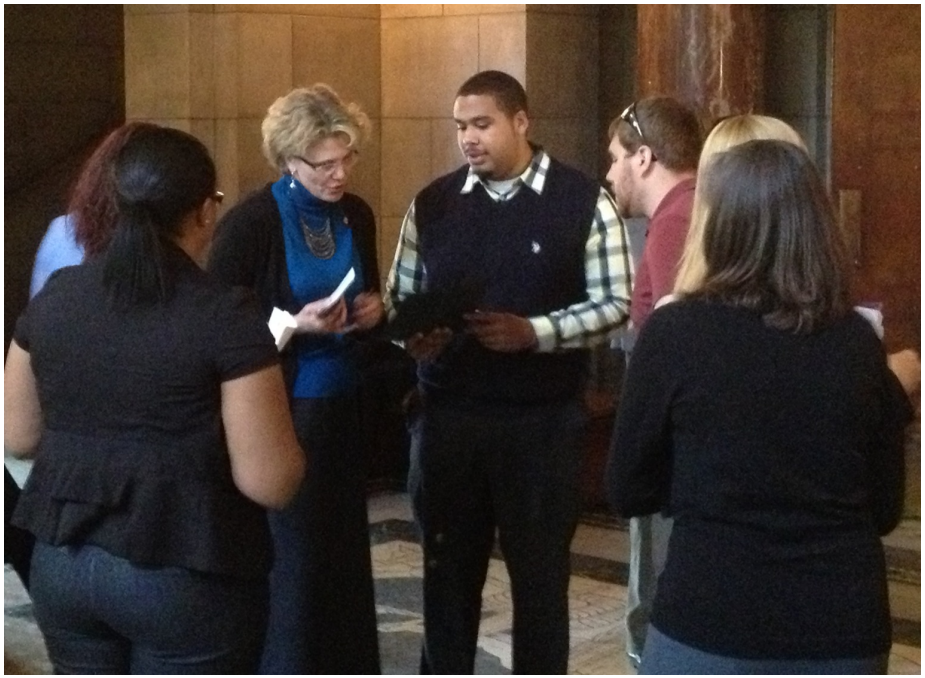
Spring Lecture Series

May 2014

Roadmap

- **Bridge to Independence Program**
  - Background
  - Key provisions
  - Resources
    - Sample court documents
  - Players and roles
- **Positive Youth Development**
  - 6 C's of youth development
  - Youth-adult partnership
  - Brain development
- **Case Scenarios**
- **Team Planning**
  - Team Planning Guide
  - Report Back
- **ACA provision for Youth Formerly in Foster Care**
  - Background
  - Federal statute and guidance
  - Resources

Bridge to Independence
(B2I)



Background

The Need

- The current system results in poor outcomes for many young people who age out of foster care
  - **Less than 2% finished college**
  - **Over 50% experienced homelessness**
  - Many others struggled with **employment, health care access, and poverty**

- Nebraska is no exception to this
  - **About 300 youth each year** leave foster care without achieving permanency
  - Although about 60% of these youth apply for assistance from the Former Ward program, **only about a third actually received services** through the end of the year

Background

Federal Opportunity and Nebraska Process

- Federal Fostering Connections Act, P.L. 110-351 (2008)
- More than a dozen other states

- NE process: stakeholder group, fiscal analysis, NDHHS data, surveys of over 250 stakeholders and surveys and focus groups with 100 youth
- Youth-driven process, with Project Everlast

Background

Nebraska Legislation

- LB 216 (Sen. McGill, 2013)
  - Passed by the Nebraska Legislature (44-2-3) on May 29, 2013
  - Signed into law by Gov. Heineman on June 5, 2013
  - Codified at Neb. Rev. Stat. § 43-4501 et seq.
- Advisory Committee
- State Plan Amendment/start date
- NDHHS proposed regulations (395 NAC 10)
- LB 853 & LB 908 (Sens. McGill & Coash, 2014)

Key provisions

Eligibility Requirements

- Adjudicated under § 43-247(3)(a) and in an out-of-home placement at 19 or discharged to independent living, and
- Meeting <u>at least one</u> of the following requirements:
  - Completing secondary education
  - Enrolled in post-secondary education
  - Employed at least 80 hours per month
  - Participating in a program or activity to remove barriers to employment
  - Unable to do any of those because of a medical condition

Key provisions

Services for Young Adults

- Medicaid coverage
- Case management services
  - Services enumerated in Neb. Rev. Stat. § 43-4505
- Continued foster care maintenance payments to provide housing support for the following housing options:
  - Foster family home
  - Supervised independent living setting (e.g. single/shared apartments, houses, host homes, college dorms, etc.)
  - An institution or foster care facility, if necessary due to developmental level or medical condition

Key provisions

Oversight Mechanisms

Annual Permanency Reviews

- Held **at least once per year and at additional times**, as reasonably practicable, at the request of the young adult, HHS, or other party
- Conducted by the juvenile court

6-Month Case Reviews

- Held **every 180 days** to evaluate progress made toward meeting goals in the case plan
- Conducted using a team approach by HHS and at least one person not responsible for case management, in collaboration with the young adult and others identified by the young adult

- Monthly face-to-face meetings with Independence Coordinator

Extended Adoption & Federal Guardianship Assistance

Eligibility

Young people who, at age 16+:

- were adopted (and whose adoptive parents were receiving adoption assistance), or
- entered **into a guardianship with a licensed relative** (and had a guardianship agreement), and
- Meet same education/work eligibility requirements

Services

- Medicaid coverage
- Extended guardianship/adoption subsidies

State Extended Guardianship Assistance Program

Eligibility

Young people who, at age 16+:

- Entered into a guardianship at age 16+ that was **NOT a state guardianship agreement with a licensed relative**, and
- Meet same education/work eligibility requirements

Services

- Extended guardianship subsidies (no Medicaid), *to the extent possible with existing funds*

State Extended Guardianship Assistance Program

Implementation

- A total of $400,000 for the biennium was appropriated by the Legislature
- LB 216 specifically directed Advisory Committee to make recommendations for maximizing and making efficient use of this funding
- Right Turn public-private partnership

Timeline of Service Provision

A youth adjudicated under § 43-247(3)(a) and in an out-of-home placement turns 16 (or enters care and is age 16+ already)

- ☑ **HHS begins providing written information about the program** and continues to do so every year thereafter

90 days prior to the youth's last court hearing before turning 19 or being discharged to IL

- ☑ **HHS again provides written information about the program**
- ☑ **Independence Coordinator meets with the youth to explain the program** in person and how to avoid a lapse in services and support

The youth chooses to participate in the program

- ☑ **The young adult and HHS sign a voluntary services and support agreement**
  - For continuous enrollment, the agreement is signed prior to and filed with the court at the last court hearing

Timeline of Service Provision

Within 45 days of signing the voluntary services and support agreement

- ☑ **An Independence Coordinator (IC) is assigned** that, at minimum, has received specialized training
- ☑ **The young adult begins receiving program services**
- ☑ **HHS files a petition with the juvenile court**, a copy of the signed agreement, a copy of the case plan, and any other information for the court's consideration

Within 180 days of signing the agreement

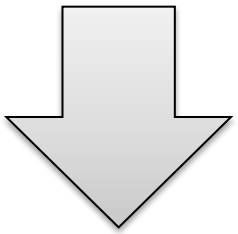
- ☑ **The court has jurisdiction to review the agreement and to conduct permanency review hearings**.
- ☑ **The court opens an extended services and support file** for the purpose of determining whether participating in the program is in the young adult's best interest and to conduct the permanency reviews

The young adult continues to remain eligible and enrolled in the program

- ☑ **Services and support continue**, with an emphasis on permanency
- ☑ **Permanency reviews** conducted by the court are held annually (or upon request)
- ☑ **Case reviews** conducted by HHS/FCRO are held every 180 days (or upon request)

Timeline of Service Provision

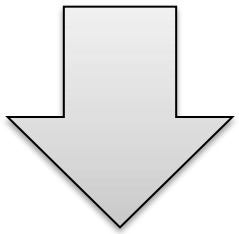
If the young adult **decides to leave** the program



The young adult may terminate the agreement **at any time.**

HHS will provide written information about the potential negative consequences of this and how to reenter the program anytime before age 21.

If the young adult **is determined to be ineligible** for the program



At least 30 days prior to the termination of services, written notice (including information about the appeal process) is provided to the young adult.

(*Academic breaks or other transitions of 30 days or less between eligibility requirements cannot be a basis for termination.*)

Juvenile Court's Role

- Upon the filing of a petition, the court shall open a B2I program file for the young adult for the purpose of:
  - determining whether continuing in such program is in the young adult's best interests, and
  - conducting permanency reviews.

Neb. Rev. Stat. § 43-4508(3)

Best Interests Determination

- The court shall make the best interests determination **not later than 180 days** after the young adult and HHS enter into the agreement.
  - HHS must file petition with the court within 45 days of signing the agreement
  - "best interest to participate in the B2I program"

Neb. Rev. Stat. § 43-4508(4)

Permanency Review Hearings

Frequency

- The juvenile court shall conduct permanency hearings **at least once per year**
  - **And at additional times**, but not more times than is reasonably practicable, at the request of the young adult, HHS or any other party to the proceeding
- The juvenile court shall conduct the permanency reviews **in an expedited manner** and shall issue findings and orders, if any, **as speedily as possible**.
  - The juvenile court may request the appointment of a **hearing officer** pursuant to Neb. Rev. Stat. § 24-230 to conduct permanency review hearings.

Neb. Rev. Stat. § 43-4508(5)

Permanency Review Hearings

Purpose

The **primary purpose** of the permanency review is to ensure that the B2I program is providing the young adult with the needed services and support to help the young adult move toward permanency and self-sufficiency.

Neb. Rev. Stat. § 43-4508(6)(a)

Permanency Review Hearings

Active Engagement of Young Adult

- **The court shall consult with the young adult**
  - This shall include that, in all permanency reviews, the court shall consult, in an age-appropriate manner, with the young adult regarding the proposed permanency or transition plan for the young adult.
- The young adult shall have a **clear self-advocacy role** in the permanency review, and
- The hearing shall support **the active engagement of the young adult** in key decisions

Neb. Rev. Stat. § 43-4508(6)(a)

Permanency Review Hearings

Informal Manner & Setting

- Permanency reviews shall be conducted **on the record** and **in an informal manner** and, whenever possible, **outside of the courtroom**.

Neb. Rev. Stat. § 43-4508(6)(a)

Permanency Review Hearings

HHS's Role

- **HHS presents a case plan** to the juvenile court
  - The department shall prepare and present to the juvenile court a report, at the direction of the young adult, addressing progress made in meeting the goals in the case plan and shall propose modifications as necessary to further those goals.
- **HHS meets with the young adult** at least 30 days prior to each permanency review
  - At least thirty days prior to each permanency review or case review, the independence coordinator shall meet with the young adult to notify the young adult of the date, time, and location of the review, to explain the purpose of the review, and to identify additional persons the young adult would like to attend the review and assist in making arrangements for their attendance.

Neb. Rev. Stat. § 43-4508(6)(b)

Juvenile Court Jurisdiction

NEW subsection (11) of Neb. Rev. Stat. § 43-247 – "the proceedings under the Young Adult Bridge to Independence Act"

The court has the **jurisdiction to review the agreement** signed by HHS and the young adult **& to conduct permanency reviews**.

- **The court shall determine** whether the B2I program is providing the appropriate services and support as provided in the agreement to carry out the case plan.
- **The court has the authority** to determine whether the young adult is receiving the services and support he or she is entitled to receive under the B2I Act and the department's policies or state or federal law to help the young adult move toward permanency and self sufficiency.
- **If the court believes that the young adult requires additional services and support** to achieve the goals documented in the case plan or under the B2I Act and the department's policies or state or federal law, the court may make appropriate findings or order the department to take action to ensure that the young adult receives the identified services and support.

Neb. Rev. Stat. § 43-4508(6)(b)

Appointment of Attorneys and CASAs

Court-appointed client-directed attorney

- **If desired by the young adult, a court-appointed attorney shall be provided** who has received training appropriate to the role
- The representation shall be **client-directed** (not best interests)
- The (under 19) **GAL's appointment may be continued**, with consent from the young adult, but under a client-directed model of representation
- HHS must include info about the right to request an attorney as part of a **written notice** provided to youth at age 16 and yearly thereafter, and 90 days before the last court hearing

CASA volunteer

- The court has discretion to appoint a CASA volunteer or continue the appointment of a previously appointed CASA volunteer with the consent of the young adult.

Neb. Rev. Stat. § 43-4510(1)&(2)

Questions for CASA volunteers

- What is the CASA volunteer's role in a B2I case?
  - Pursuant to the CASA Act (Neb. Rev. Stat. § 43-3701 et seq.), the CASA volunteer's role is to examine and provide information to the court regarding **best interests**
  - However, best interests pursuant to the B2I Act is described as "***best interests to participate in the B2I program***"
- Does my role change if I was the young adult's previous (under 19) CASA volunteer?
  - "The court has discretion to…continue the appointment of a previously appointed CASA volunteer **with the consent of the young adult**"
  - Important to discuss with the young adult how this program, best interests, and your role is different.

Questions for Attorneys

- What are the situations in which I might be appointed?
- What is the young adult attorney's role in a B2I case?
- What if I was previously the young adult's GAL?

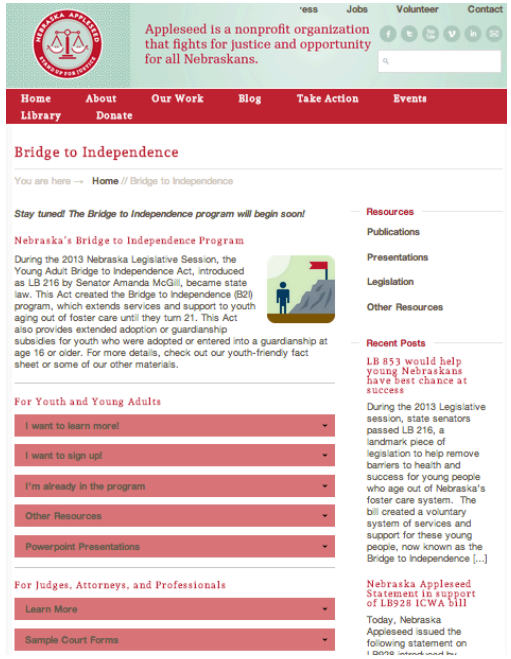
Questions for Judges

- What processes should the court put in place in (3)(a) cases related to the B2I program?
- How can B2I permanency hearings be informal? Where could B2I permanency hearings be held outside of the courtroom?
- How can the court support the active engagement of young adults in key decisions in B2I cases?
- How far can courts go in making orders to ensure the young adult receives identified services and support?

Resources

For judges, lawyers and professionals

www.neappleseed.org/B2I

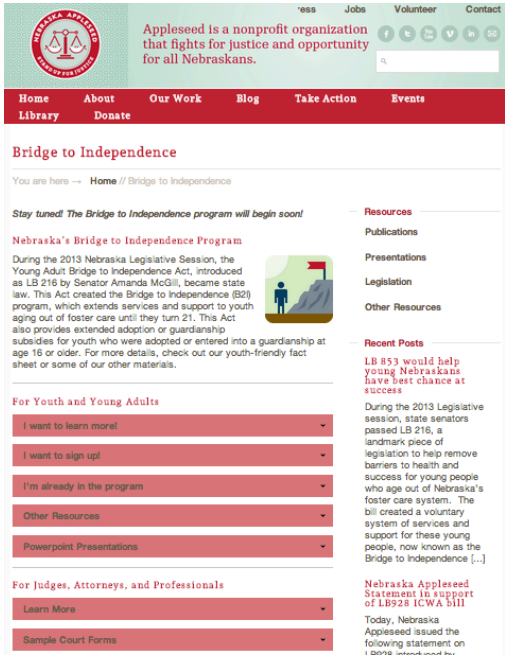


- Bench Bar Guide
- Fact sheets:
  - B2I Fact Sheet
  - Timeline of Service Provision
  - Super Simple B2I and ACA Fact Sheet
- Sample court forms:
  - Sample Order and Findings Regarding Voluntary Services and Support Agreement
  - Sample Order and Findings After B2I Permanency Review Hearing

Resources

For young adults

www.neappleseed.org/B2I



- Young Adult B2I Fact Sheet
- B2I Know Your Rights Guide
- Under 19 vs. B2I hearings
- B2I sample motions:
  - Sample Young Adult Motion to Request a Hearing
  - Sample Young Adult Motion to Request an Attorney
  - Sample Young Adult Motion to Request a CASA Volunteer
- B2I Court Questionnaire

For Youth and Young Adults

- I want to learn more!
- I want to sign up!
- I'm already in the program
- Other Resources
- Powerpoint Presentations

For Judges, Attorneys, and Professionals

- Learn More
- Sample Court Forms
- Other Resources
- Powerpoint Presentations

For Judges, Attorneys, and Professionals

- Learn More
- Sample Court Forms

Sample Order and Findings Regarding Voluntary Services and Support Agreement – This sample Order and Findings was created by Nebraska Appleseed for courts to use in making a best interests determination upon a young adult's entrance into the B2I program. Courts are required to make this determination within 180 days of the young adult and the department entering into a voluntary services and support agreement. **Word** | **PDF**

Sample Order and Findings after B2I Permanency Review Hearing – This sample Order and Findings was created by Nebraska Appleseed for courts to use for permanency review hearings in the B2I program. Courts are required to conduct a permanency review hearing at least once per year and at additional times at the request of the young adult, the department, and any other party to the proceeding (within reason). **Word** | **PDF**

B2I Court Questionnaire – This link allows young adults in the B2I program to let their judge know how the case is progressing from their point of view (similar to the Youth Court Questionnaire) and directly submit it to the court online.

- Other Resources
- Powerpoint Presentations

The Adolescent Brain

- The brain is not done developing at age three as previously believed
- Relationships matter
- A positive youth development approach is no longer just good practice, it is a neurological imperative

Jim Casey Youth Opportunity Initiative. *The Adolescent Brain: New Research and It's Implications for Young People Transitioning from Foster Care*. St Louis, MO: Jim Casey Youth Opportunity Initiative, 2002. Print.

Building Self-Advocates

- Time intensive
- May require cultural shift
- Based on the desire and abilities of each young person
- Provides opportunity for increased trust in process and people
- Not easily achieved, but payoff is great

Youth Engagement – 6 C's

- Individual level
- Not about "fixing" behavior; rather building attributes, knowledge and skills
- Focused on youth-mentor relationship

Pittman, K., Irby, M., Tolman, J., N. Yohalem, N., &; Ferber, T. (2003). Preventing Problems, Promoting Development, Encouraging Engagement. Forum for Youth Investment.

Youth Engagement – 6 C's

- Components:
  - Confidence
  - Character
  - Connection
  - Contribution
  - Competence
  - Caring

Pittman, K., Irby, M., Tolman, J., N. Yohalem, N., &; Ferber, T. (2003). Preventing Problems, Promoting Development, Encouraging Engagement. Forum for Youth Investment.
Lerner, Richard M., and Roberta Israeloff. *The Good Teen: Rescuing Adolescence from the Myths of the Storm and Stress Years*. New York: Stonesong Book/Crown Pub., 2007. Print.

Youth-Adult Partnership

- Treat youth as partners - voice and equal vote
- Welcome, encourage, and affirm contributions and insights from both youth and adults
- Ensure "buy in"
- Be selective
- Establish high expectations for everyone
- Provide training
- Youth-friendly meeting times/locations and clear communication about meetings

Source: Jackson, Kayla. "Tips for Partnering with Youth." *Tips for Partnering with Youth*. Ed. Sue Alford. Advocates for Youth, 2002. Web. 05 May 2014

Youth – Adult Partnership

- Don't make assumptions
- Develop relationships first
- Understand and respect “no”
- Include room for growth and advancement
- Different styles of communication do not imply disrespect, disinterest, or different goals and expectations
    - Be open to answering questions and addressing conflict

Source: Jackson, Kayla. "Tips for Partnering with Youth." *Tips for Partnering with Youth*. Ed. Sue Alford. Advocates for Youth, 2002. Web. 05 May 2014

Not Youth Engagement

- Lack clear role
- Assigned unwanted or “busy” tasks
- Playing spokesperson without any voice in developing the messages, programs, or policies that the youth are expected to talk about
- Calling one youth at the table “youth involvement”

Norman, Jane. "Building Effective Youth-Adult Partnerships." *Building Effective Youth-Adult Partnerships*. Advocates for Youth, Oct. 2001. Web. 05 May 2014.

Resources

- *Project Everlast* - http://www.projecteverlast.org/
- *Jim Casey Youth Opportunities Initiatives* - http://jimcaseyyouth.org/
- *National Resource Center for Permanency and Family Connections* - http://www.nrcpfc.org/
- *Foster Club* - http://www.fosterclub.com/
- *National Resource Center for Youth Development* - http://nrcyd.ou.edu/
- *Find Youth Info* - http://findyouthinfo.gov/
- Forum for Youth Investment: - http://www.forumfyi.org/youth_engagement
- Advocates for Youth - http://www.advocatesforyouth.org/for-professionals/working-with-youth-professionals

Case Scenarios

Team Planning

Affordable Care Act

Youth Formerly in Foster Care

ACA 101

- The ACA created tax credits for those with incomes between 100% and 400% of the FPL.
- The ACA also made changes to the Medicaid program by adding two new coverage categories:
  - First, the law extended coverage to all adults between 19 and 64 with incomes under 133% of the FPL.
    - This is the provision the U.S. Supreme Court ruled is optional for states.
    - For childless adults who do not fall into one of the other mandatory categories and whose incomes are below 100% of the FPL, the new Medicaid program offers their only opportunity to get health care coverage.
  - Second, section 2004 of the ACA created a new mandatory eligibility category for youth formerly in foster care.
    - The U.S. Supreme Court decision did not impact this new category, which remains mandatory.

Medicaid Coverage to Age 26 for Youth Formerly in Foster Care

- New mandatory category
- Income limits do not apply, and there are no asset or resource test.
- Intended to equalize insurance coverage among young adults, placing youth aging out of foster care on par with their same-age peers who can remain on their parents' insurance until age 26 under the ACA.

Social Security Act
42 U.S.C. 1396a(a)(10)(A)(i)(IX)

Youth formerly in foster care are mandatorily eligible for Medicaid coverage if they:

- are under 26 years of age;
- are not described in or enrolled under any [other mandatory category] or are [otherwise eligible under another category] but have income that exceeds the level of income applicable under the State plan for eligibility;
- **were in foster care under the responsibility of the State on the date of attaining 18 years of age or such higher age as the State has elected**; and
- were enrolled in the State plan under this title or under a waiver of the plan while in such foster care.

“in foster care under the responsibility of the State
on the date of attaining 18 years of age
or such higher age as the State has elected”

"in foster care under the responsibility of the State on the date of attaining 18 years of age or such higher age as the State has elected"

- "in foster care"
  - As defined in 45 C.F.R. 1355.20
  - Not guardianships
- "under the responsibility of the state"
  - Optional for states to cover youth from other states under proposed federal guidance (NE will not)
- "on the date of attaining"
  - This is a point-in-time test! The youth must be in foster care on their birthday
- "or such higher age as the state has elected"
  - NE reg = "aged out"
  - Eligibility in cases closed after 18th birthday

Federal Guidance and Proposed State Regulation

- Federal Guidance
  - Proposed Federal Rule: 42 CFR 435.150: http:www.gpo.gov/fdsys/pkg/FR-2013-01-22/pdf/2013-00659.pdf
  - CMS FAQ: http://www.medicaid.gov/Federal-Policy-Guidance/downloads/FAQ-12-27-13-FMAP-Foster-Care-CHIP.pdf

- Proposed Nebraska regulation
  - 477 NAC 24-006 (proposed July 26, 2013): http://www.sos.ne.gov/rules-and-regs/regtrack/details.cgi?proposal_id=0000000000001296

What can judges, attorneys and others do?

- Don't close cases before the applicable birthday (unless there is a reason that overrides this health care access)
- Make sure HHS is including eligibility and enrollment for this provision in transition planning
  - Potential eligibility for this provision is required to be in the transition plan pursuant to Neb. Rev. Stat. § 43-1311.03(1)(c)
  - HHS is required to automatically re-determine eligibility pursuant to 42 C.F.R. 435.930 and 435.916

HEALTH CARE

New Medicaid Coverage For Youth Who Age Out of Foster Care in Nebraska to Age 26

Starting on January 1, 2014, the ACA extends Medicaid coverage to youth who aged out of foster care until age 26.

Youth will be eligible for Medicaid under this new category if they:

1. Are under 26 years of age;
2. Are not otherwise eligible for Medicaid;
3. Were in foster care under the responsibility of the state on the date of attaining 18 years of age or such higher age as the State has elected under [the Fostering Connections Act]; and
4. Were enrolled in Medicaid or a waiver program while in such foster care.[1]

The Affordable Care Act (ACA) requires that Nebraska cover certain youth who have aged out of the foster care system under Medicaid until age 26.

What judges, attorneys, and advocates can do.

This new eligibility category provides youth who age out of foster care with an opportunity to be covered under an insurance plan, just as their non-foster care peers can now be covered under their parents' plan. Advocates here in Nebraska should work to ensure that the law is fully implemented locally and that eligible youth enroll in the program. Judges and attorneys can also play an important role in the law's implementation by being aware of these key provisions, informing youth about the program, and recognizing how a youth's current juvenile case can impact their future eligibility.

What judges, attorneys, and advocates should know.

Coverage under this new category in Medicaid will include youth who aged out of care prior to January 1, 2014.

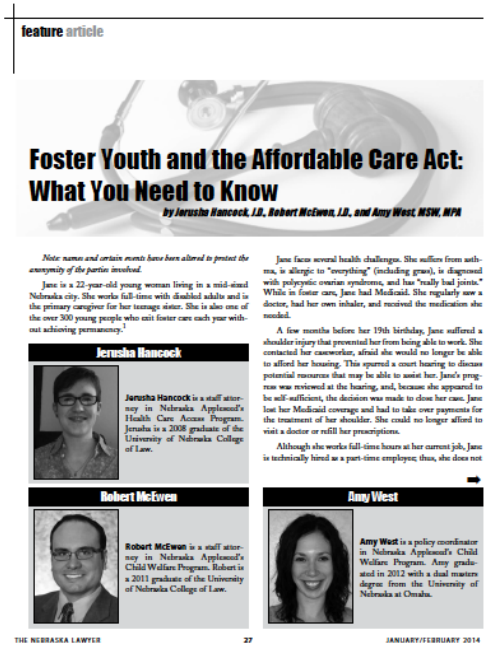
Under the plain language of the statute, there is no differentiation between youth who aged out prior to January 1, 2014, and those who aged out after that date. Therefore, the statute will apply retroactively to youth who aged out of the system prior to January 1, 2014, and meet the requirements described above.

Discharging youth to independent living prior to the age of 18 will likely preclude future Medicaid coverage.

Under the plain language of the statute, young people who are discharged to independent living prior to their *18th birthday* will not be eligible under this new Medicaid category.

Discharging youth to independent living between the ages of 18 and 19 may preclude future Medicaid coverage.

Due to the statutory language "on the date of attaining 18 years of age or such higher age as the State has elected under [the Fostering Connections Act]," there was a question as to whether youth discharged to independent living prior to their *19th birthday* in Nebraska could be ineligible under this new Medicaid category. In January of 2013, the Centers for Medicare and Medicaid Services (CMS) issued draft federal regulations that indicate that youth discharged after their 18th birthday, but before their 19th birthday, would be eligible for Medicaid.[2] However, the Nebraska Department of Health and Human Services recently released proposed regulations that require youth to have "aged out," as opposed to covering youth after age 18 as allowed by the federal statute. Therefore, the potential impact on Medicaid eligibility to age 26 should be carefully examined when considering discharging a young person to independent living before the age of 18 or 19. Please contact Nebraska Appleseed at 402-438-8853 with questions.



feature article

Foster Youth and the Affordable Care Act: What You Need to Know

by Jerusha Hancock, J.D., Robert McEwen, J.D., and Amy West, MSW, MPH

Note: names and certain events have been altered to protect the anonymity of the parties involved.

Jane is a 22-year-old young woman living in a mid-sized Nebraska city. She works full-time with disabled adults and is the primary caregiver for her teenage sister. She is also one of the over 300 young people who exit foster care each year without achieving permanency.[1]

Jane faces several health challenges. She suffers from asthma, is allergic to "everything" (including grass), is diagnosed with polycystic ovarian syndrome, and has "really bad joints." While in foster care, Jane had Medicaid. She regularly saw a doctor, had her own inhaler, and received the medication she needed.

A few months before her 19th birthday, Jane suffered a shoulder injury that prevented her from being able to work. She contacted her caseworker, afraid she would no longer be able to afford her housing. This spurred a court hearing to discuss potential resources that may be able to assist her. Jane's progress was reviewed at the hearing, and, because she appeared to be self-sufficient, the decision was made to close her case. Jane lost her Medicaid coverage and had to take over payments for the treatment of her shoulder. She could no longer afford to visit a doctor or refill her prescriptions.

Although she works full-time hours at her current job, Jane is technically hired as a part-time employee; thus, she does not

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Amy West

Amy West is a policy coordinator in Nebraska Appleseed's Child Welfare Program. Amy graduated in 2012 with a dual masters degree from the University of Nebraska at Omaha.

THE NEBRASKA LAWYER 27 JANUARY/FEBRUARY 2014

Resources

- Appleseed fact sheets
  - Medicaid Coverage and Youth Aging Out (for legal professionals)
  - The ACA and You: Fact Sheet for Youth
- *The Nebraska Lawyer* (January 2014):"Foster Youth and the Affordable Care Act: What You Need to Know"

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