



## COLORADO OFFICE OF **THE CHILD'S REPRESENTATIVE**

### **Foster Youth in Transition Program Frequently Asked Questions**

#### **I am working with a youth who has a juvenile delinquency (JD) case. Are youth with JD cases eligible for the FYTP?**

There is disagreement whether youth with open JD cases are eligible for the FYTP.

- Some county departments believe that language in CRS 19-7-304(2) referencing “an individual who is no longer under the jurisdiction of the juvenile court” renders youth with open JD cases ineligible for the FYTP.
- OCR disagrees for many reasons and Counsel for Youth (CFY) in Denver, Douglas, and El Paso Counties have successfully argued that youth with JD cases are eligible for the FYTP. Example pleadings can be found in the Litigation Toolkit.
- During a meeting between CDHS and OCR, both offices agreed that this issue should be litigated through the court system.

#### **I am working with a youth who is interested in reentering the system through an FYTP case but I do not have a case number to bill in. What can I do?**

- CRS 19-7-308(1) and 19-7-306(1)(b) provide OCR the authority to assign counsel in FYTP cases.
- Please refer youth who want to reenter the system through an FYTP to OCR using the referral form on OCR's [FYTP webpage](#).
- OCR will process the referral, assign a CFY, and provide the assigned CFY an OCR-Assigned (OA) case number. When/If an FYTP court case opens, the assigned CFY will ask to be appointed in the court case, close the OA case in CARES, open the court case in CARES, and bill in the court case.

#### **The county will not file an FYTP petition until the Voluntary Services Agreement (VSA) has been in effect for 90 days but I think a petition should be filed now. What can I do?**

- CRS 19-1-307(1) *requires* the county to file an FYTP petition 90 days after a VSA has been in effect. Some counties use this language to argue that they *will not or cannot* file an FYTP petition until a VSA has been in effect for 90 days.
- However, CRS 19-1-307(1) states that a youth can file an FYTP petition at any time.
- A form FYTP petition and an example FYTP petition can be found on the Litigation Toolkit.

### **How does venue work in FYTP cases?**

- Initial venue for a youth remaining in the system is proper. At the youth's option, in the county where the youth self-attests to reside or in a county currently serving the youth. CRS 19-7-307(1.5).
- Initial venue for a youth who is reentering the system through an FYTP case is proper where the youth self-attests to reside. CRS 19-7-307 (1.5).
- Change of venue is not addressed in the FYTP.
  - Refer to Volume 7 rules (12 CCR 2509:3-203.43(A)(4)).
  - A venue tip sheet can also be found in the Litigation Toolkit.

### **The youth I represent in an FYTP case is not complying. What can happen? What should I do?**

- *Does the youth want to withdraw their participation in the FYTP and reenter again later?* Youth can ask the court to withdraw their participation in the FYTP at any time. CRS 19-7-313(1)(a). The court must hold the emancipation discharge hearing within 35 days after receiving the youth's motion to review the youth's emancipation transition plan and advise the youth pursuant to CRS 19-7-310. *Id.* Eligible youth can reenter the FYTP any time before they reach 21 (or the greater age of foster care eligibility set by federal law). CRS 19-7-310(3)(e) and 19-3-705(3)(d).
- *Does the youth want to argue that the department has not made efforts to reengage the youth?* A department may ask the court to terminate a VSA and the court's jurisdiction because the youth no longer meets the eligibility requirements in CRS 19-7-304. CRS 19-7-313(1)(c). The motion must include the department's efforts to reengage the youth including (a) providing written notice to the youth in a clear and developmentally appropriate manner that informs the youth of the department's intent to request that the court terminate the VSA with an explanation of the reasons, and (b) documentation of the department's reasonable efforts to meet with the youth in person to explain the information in the written termination notice and to assist the youth in reestablishing eligibility if the youth wishes to continue in the FYTP. CRS 19-7-310(1)(c)(II).
- *Does the youth want to argue that the youth has not been given a fair chance?* CRS 19-7-301(1)(g), the legislative declaration, states, "Available research shows that emancipating youth benefit from extended foster care services and supports until age twenty-one, and community-based supports through early adulthood, but for the benefits of such services and supports to last, youth in foster care need developmentally appropriate services, including freedom to test their independence and to make mistakes with proportional consequences and a reasonable safety net."

### **How do incapacity and diminished capacity come into play in FYTP cases?**

- Incapacitated person: A party may request that the court determine whether a youth is an incapacitated person. CRS 19-3-704. An "incapacitated person" is a person "who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance." CRS 15-14-102(5). If youth is deemed an incapacitated person, then jurisdiction continues as set forth in CRS 19-3-205 (i.e., either the youth transitions

into adult services and it is in the youth's best interests to terminate jurisdiction, or the youth turns 21 or such greater age of foster care eligibility as required by federal law); and the GAL must remain GAL and a separate CFY must be appointed. CRS 19-3-704(2) & 19-3-203(3).

- Diminished Capacity: A court may appoint a GAL for a child/youth aged 12 or older if the court determines a GAL is necessary due to the youth's diminished capacity. CRS 19-1-111(2)(e) & 19-3-203(3). The child's/youth's GAL must remain the child's/youth's GAL and a separate CFY must be appointed. CRS 19-3-203(3). Diminished capacity means lacking "sufficient capacity to communicate or make considered decisions adequately in connection with the child's or youth's legal representation. Age or developmental maturity must not be the sole basis for a determination of diminished capacity." CRS 19-1-103(55.5).

**Where can I go to get additional information about the FYTP?**

- OCR's FYTP page.
- OCR's Litigation Toolkit.
- OCR Staff Attorney Liaison or Cara Nord.
- OCR Listserv.