



ACF Cannot Ensure That All Child Victims of Abuse and Neglect Have Court Representation

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Why OIG Did This Review

As a condition of grant funding under the Child Abuse Prevention and Treatment Act (CAPTA), as amended, a State must assure through a certification that it has in effect and is enforcing a State law or operating a Statewide program that includes provisions and procedures requiring that in every case of child abuse or neglect that results in a judicial proceeding, a representative (e.g., an attorney or nonattorney volunteer) be appointed to advocate for the child's best interests. However, States' annual reporting to the Administration for Children and Families (ACF) suggests that some States may not be appointing a representative for every child victim.

These factors raise concerns about whether ACF has taken sufficient action to ensure that vulnerable children receive appropriate court representation to protect their best interests.

How OIG Did This Review

To assess ACF's oversight in selected States, we surveyed and interviewed the 10 States with the largest numbers of child victims of abuse and neglect in fiscal year 2016. We also summarized ACF officials' interview responses and agency documentation about procedures to oversee CAPTA's requirement for court representation.

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Key Takeaways

- ACF does little to oversee States' compliance with CAPTA's requirement for court representation, relying instead on States' self-certification
- Some States lack oversight systems to ensure that every child victim has a court representative
- Some States described challenges that impede their ability to appoint a representative to every child victim
- Inaccurate data impede ACF's ability to identify States that do not ensure court representation for all child victims

What OIG Found

ACF is responsible for overseeing States' compliance with CAPTA's requirement for court representation. However, ACF does little to monitor or enforce States' compliance with this requirement, relying instead on States' self-certification.

ACF officials reported that ACF considers a State compliant as long as the State has assured through a certification that it has in effect provisions and procedures requiring court representation for child victims—regardless of whether the State effectively implements and enforces that requirement. ACF officials reported that CAPTA does not provide ACF with the authority to look behind State assurances and monitor whether States actually appoint court representatives to all child victims.

This is concerning because 5 of the 10 States we reviewed indicated that they do not have systems in place to monitor whether all child victims are appointed a court representative. States also reported numerous challenges that, in some cases, impeded their ability to promptly appoint a court representative to every child victim.

ACF officials explained that ACF prioritizes providing States with technical assistance to support compliance rather than

penalizing States. However, none of the States we reviewed received technical assistance from ACF related to the court-representation requirement, and only four were aware that ACF offers such assistance.

We also found that ACF does not receive complete and accurate court-representative data from States, impeding its ability to identify and respond to problems. Of the 10 States we reviewed, only 2 confirmed the accuracy of the court-representative appointment figures that they voluntarily reported to ACF. State officials described technical challenges that impede reporting, such as a lack of centralized data systems. Additionally, some States face challenges related to communication between court or representative program staff and child welfare agency staff.

What OIG Recommends and How the Agency Responded

We recommend that ACF conduct oversight activities—seeking statutory authority as necessary—to identify, and proactively provide technical assistance to, States that may not appoint a court representative to every child victim. We also recommend that ACF proactively identify and address obstacles that States face in reporting complete and accurate court-representative data. ACF did not explicitly concur or nonconcur with our recommendations. However, ACF asserted a lack of statutory authority to implement our recommendations and stated that our recommended approach is inconsistent with the structure of the CAPTA State grant program.

TABLE OF CONTENTS

BACKGROUND	1
Methodology	4
FINDINGS	7
ACF does little to monitor or enforce States' compliance with CAPTA's GAL requirement, relying instead on States' self-certification	7
ACF has rarely reviewed whether any States are meeting CAPTA's GAL requirement, despite evidence of potential noncompliance	8
Some States are unable to ensure that all child victims are represented in court, raising questions about ACF's reliance on States' self-certification	10
Inaccurate and incomplete GAL data impede ACF's ability to identify States that do not ensure all child victims receive court representation	12
RECOMMENDATIONS	15
Conduct oversight activities to identify States that may not appoint a GAL to every child victim who undergoes a judicial proceeding, seeking statutory authority as necessary	16
Proactively provide technical assistance to States that face challenges in appointing a GAL for every child victim	16
Proactively identify and address obstacles that States face in reporting complete and accurate GAL data	17
AGENCY COMMENTS AND OIG RESPONSE	19
APPENDICES	22
A. GAL Appointment Figures That States Reported to ACF and OIG Differed for Several States	22
B. Agency Comments	23
ACKNOWLEDGMENTS AND CONTACT	31
ABOUT THE OFFICE OF INSPECTOR GENERAL	32
ENDNOTES	33

BACKGROUND

Objective

To assess how the Administration for Children and Families (ACF) ensures that all child victims of abuse and neglect have their best interests represented in court, as required.

Approximately one in four children experience abuse or neglect in their lifetimes. In fiscal year (FY) 2018, approximately 3.5 million children received a Child Protective Services investigation or alternative response after an allegation of abuse or neglect. Abuse and neglect can have both acute and long-term effects, impairing children's physical health; mental health; social and behavioral development; and academic functioning. A supportive home environment, positive school experiences, and services to help families address factors underlying child maltreatment can foster children's resilience and help prevent future abuse and neglect.

To protect child victims, as a condition of receiving grant funding under the Child Abuse Prevention and Treatment Act as amended (CAPTA),¹ States must assure through a certification that they have in effect and are enforcing a State law, or are operating a Statewide program, that includes provisions and procedures requiring that every child victim involved in an abuse or neglect judicial proceeding be appointed a representative known as a guardian ad litem (GAL).² GALs play a critical role in ensuring the safety and well-being of vulnerable children victimized by neglect and abuse. The GAL is responsible for gaining an understanding of the child's situation and needs and making recommendations to the court regarding the child's best interests. For example, the GAL may make recommendations about where and with whom a child should live; what type of contact the child should have with one or both parents; what types of services should be provided to the child and family; and other decisions that significantly affect the child's well-being. A substantial body of research demonstrates that when child victims of abuse or neglect have a court-appointed representative to advocate for their best interests, they are likely to achieve better outcomes (e.g., less likely to remain in foster care long-term and more likely to have their cases permanently closed).^{3, 4, 5}

However, States' annual reporting to ACF suggests that some States may not be appointing a GAL for every child victim. Some States do not report key information about GAL appointments at all. This raises concerns about whether ACF conducts adequate oversight and provides sufficient technical assistance to ensure that States are effectively addressing all components of CAPTA's GAL requirement.

CAPTA Requirements for States

CAPTA Grants to States

CAPTA was originally authorized in 1974 to provide grants to States for “improving the child protective services systems.”⁶ The law has been reauthorized and amended several times, with the most recent reauthorization in December 2010 and amendment in January 2019.⁷ CAPTA grants assist States in child abuse and neglect prevention, assessment, investigation, prosecution, and treatment activities.⁸ Currently 50 States, the District of Columbia, Puerto Rico, and four additional territories (hereinafter referred to as “States”) receive grants, with a total of \$90.1 million in assistance disbursed in FY 2020. Consistent with Congressional intent, ACF instructed States to continue to prioritize use of \$60 million from those funds for meeting CAPTA requirements regarding the health and safety of substance-exposed infants.

A State that receives CAPTA grant funding must submit to the Secretary of Health and Human Services (the Secretary) a plan describing the activities that the State will carry out using this funding.⁹ This State plan must include a signed assurance—in the form of certification by the Governor of the State—that the State complies with CAPTA’s 31 requirements relating to child abuse and neglect. One of these 31 requirements is the GAL requirement, described below.¹⁰

CAPTA’s GAL Requirement

CAPTA states that as a condition of receiving grant funds, the State must provide an assurance that it either has in effect and enforces a State law, or has in effect and operates a statewide program, that includes provisions and procedures requiring that:

- A GAL is appointed in every case involving a victim of child abuse or neglect that results in a judicial proceeding.
- GALs (1) “obtain first-hand, a clear understanding of the situation and needs of the child” and (2) “make recommendations to the court concerning the best interests of the child.”
- GALs receive training appropriate to the role, including training in early childhood, child, and adolescent development.¹¹

States vary in the way that they define the GAL role. The GAL may be an attorney; a nonattorney professional representative (e.g., a GAL program staff member); or a volunteer, such as a court-appointed special advocate (CASA). The GAL may work independently or—in some States—be supported by a multidisciplinary team. For example, a volunteer may be responsible for gathering information regarding the child’s situation and an attorney may present the child’s case in court.

To enable GALs to represent children, States may include specific duties of GALs in statutes and policies. Required duties may consist of meeting face-to-face with the child on a regular basis, conducting an independent investigation, and submitting written reports to the court.

State-Reported GAL Data

States that receive CAPTA grant funding are required to work with the Secretary to provide annually, “to the maximum extent practicable,” specific data about children who have been mistreated.¹² Therefore, States may report—but are not required to report—to ACF two data elements related to GAL representation. States report these two data elements through the National Child Abuse and Neglect Data System (NCANDS). First, for each child associated with a report to child protective services (CPS) of abuse or neglect, the State reports whether the child was appointed a representative for the child’s best interests. (Hereinafter, we refer to this information as “GAL appointment data.”)¹³ Second, the State may report the average number of out-of-court contacts between GALs and the children they represent during the reporting year. (Hereinafter, we refer to this information as “GAL out-of-court contact data.”) Data on out-of-court contacts provides information about the extent to which GALs are meeting with children outside of court hearings. Insufficient contact with a child outside of court may impede a GAL’s ability to understand the child’s situation and needs for the purpose of making an informed recommendation to the court.

Each State designates a NCANDS Primary State Contact responsible for ensuring that data is submitted through NCANDS on behalf of the State. Typically, the NCANDS Primary State Contact is an employee of the State’s child welfare agency and is responsible for leading, overseeing, and coordinating with other staff in the State (e.g., court system staff) to facilitate the reporting of data through NCANDS.

States’ data undergo an automatic online validation process and a review by ACF’s contracted NCANDS Technical Team.¹⁴ Once finalized, States’ data are reviewed by ACF, are aggregated, and may be published in ACF’s annual *Child Maltreatment* report.¹⁵ To improve data reporting, ACF and its contracted NCANDS Technical Team may provide general and individual technical assistance to States throughout the year, including outside of the data collection period.

CAPTA-Related Technical Assistance That ACF Provides to States

ACF’s regional offices may provide technical assistance to States regarding CAPTA’s requirements for State plans. This includes providing guidance regarding documentation of State plans’ provisions for appointing a GAL and approving States’ requests for technical assistance through ACF-funded resource centers.

The resource centers’ mission is to assist States, Tribes, and courts with building their capacity to effectively implement best practices, programs, and services supporting CAPTA and other child welfare provisions.¹⁶ At ACF’s direction, the centers provide

individualized services, including technical assistance, to States. The centers routinely share information with one another, develop resources on common topics, and deliver services when reaching States, Tribes, and courts.

Methodology

Data Sources

Our study used the following data sources:

Data That States Reported to ACF. From ACF, we obtained the State-reported data from FY 2016—the most current data at the time we began our review—on the number of children appointed a GAL and the average number of out-of-court contacts that GALs had with children. (Hereinafter, we refer to this information collectively as “GAL data.”) We also obtained FY 2018 GAL data to determine whether reporting trends we identified for FY 2016 have continued.

ACF Interviews. We interviewed ACF officials in February 2016, December 2017, and January 2018 regarding the mechanisms and procedures that the agency uses to monitor and enforce State compliance with CAPTA’s GAL requirement. We asked agency officials for relevant supporting documentation and policies.

State Surveys and Interviews. In March 2018, we surveyed officials in 10 selected States (the 10 States that had the largest number of child victims in FY 2016) and conducted follow-up interviews regarding their implementation of CAPTA’s GAL requirement. State officials included child welfare staff, court staff, and (where applicable) GAL program staff. We asked officials about policies, procedures, and enforcement mechanisms that would support the signed assurances that States submitted to ACF. We also asked States about the extent to which they collect—and report to ACF—GAL data that reflect their respective activities, and the challenges that they face in this collecting and reporting. We requested documentation to support State responses.

Data Analysis

State Selection. To review the extent of ACF’s monitoring and enforcement in selected States, we surveyed and interviewed in March 2018 the 10 States with the largest number of child victims of abuse and neglect in FY 2016, asking them about their implementation of CAPTA’s GAL requirement.¹⁷ These 10 States accounted for 60 percent of child victims in 2016 and 47 percent of CAPTA grant funding to States in FY 2016 (see Exhibit 1).¹⁸

Exhibit 1: OIG surveyed and interviewed the 10 States with the largest numbers of child victims of abuse and neglect in FY 2016.

Rank	State	Number of Victims	CAPTA Funding	Percentage of Total CAPTA Funding
1	California	68,663	\$2,820,309	11%
2	New York	65,123	\$1,332,057	5%
3	Texas	57,374	\$2,202,651	9%
4	Florida	41,894	\$1,274,712	5%
5	Michigan	37,293	\$720,257	3%
6	Massachusetts	32,093	\$469,920	2%
7	Illinois	29,059	\$952,175	4%
8	Indiana	28,430	\$527,659	2%
9	Ohio	23,635	\$846,295	3%
10	Georgia	21,635	\$802,352	3%

Source: OIG analysis of FY 2016 data from NCANDS and FY 2016 CAPTA allocation data.

Note: "Number of victims" refers to the number of unique child victims in FY 2016. This field counts a child once, regardless of the number of times the child was the subject of a CPS report.

None of our 10 States reported FY 2016 GAL out-of-court contact data to ACF. Therefore, to obtain information regarding States' collection and reporting of GAL out-of-court contact data, we also selected and interviewed the following four States that reported out-of-court contact data to ACF: Louisiana, Utah, Minnesota, and New Mexico.

Support for States' Signed Assurances. We summarized State survey and interview responses and counted the number of States that have in effect provisions and procedures requiring the assignment of GALs. We also counted the number of States that enforce GAL-related provisions and procedures and summarized the enforcement mechanisms that States use. We reviewed documentation to support States' responses.

Completeness and Accuracy of GAL Representation Data. We obtained from ACF the FY 2016 data that States reported on the number of children appointed a GAL and the average number of out-of-court contacts that GALs had with children. We counted the number of States that submitted each data element to ACF in FY 2016. For selected States that did not submit one or both GAL data elements in 2016, we counted the number of States that were able to provide those missing GAL data element(s) to OIG in response to our survey. Furthermore, we summarized limitations of States' GAL data and State responses regarding challenges in providing complete and accurate GAL data to ACF. We reviewed documentation to support States' and ACF's responses.

ACF Oversight Activities. We summarized ACF officials' responses regarding the procedures and mechanisms that the agency carries out to monitor and enforce the GAL requirement, including how ACF ensures that States' assurances are accurate. We also asked ACF whether the agency had conducted a compliance review of any States, and, if so, whether it applied any enforcement actions in those States. Furthermore, we asked ACF what evidence would prompt the agency to conduct a compliance review of States and whether the agency uses the data that it collects annually from States to prompt a compliance review. We reviewed documentation to support ACF's responses.

ACF Technical Assistance. We counted the number of States that are aware of and have received technical assistance from ACF for implementing and enforcing GAL-related policies and procedures.

Limitations

The purpose of this study was to assess ACF oversight of the CAPTA GAL requirement. We did not determine whether States are compliant with the CAPTA GAL requirement. We also did not independently verify submitted survey responses and supporting documentation from State and ACF officials.

Standards

We conducted this study in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

FINDINGS

ACF does little to monitor or enforce States' compliance with CAPTA's GAL requirement, relying instead on States' self-certification

CAPTA requires that ACF monitor and oversee States' compliance with grant requirements. CAPTA states that this monitoring **shall be** in addition to reviewing each State's CAPTA plan and **may include** site visits, reviewing information on the State's website, and reviewing integration of the CAPTA requirements with the State's broader child welfare plan.¹⁹ CAPTA explicitly requires ACF to monitor States' compliance with provisions and procedures related to substance-abuse-affected infants and their families, but it does not otherwise dictate how CAPTA requirements should be prioritized for Federal oversight.

In practice, ACF does not generally review States' implementation of the GAL-related CAPTA provisions. Instead, according to ACF's *Child Welfare Policy Manual*, States themselves are primarily responsible for ensuring compliance, and the States provide the agency with signed assurances that they meet all CAPTA requirements.²⁰ ACF has provided little guidance to assist States in meeting these requirements.

ACF does not determine whether States' self-certifications of compliance reflect actual practices to ensure that children receive court representation

All States that receive CAPTA State grant funding must self-certify (through signed assurances) in a State plan that they have in effect and enforce laws, or have in effect and operate programs, that include provisions and procedures addressing each CAPTA requirement, including the GAL requirement. However, States are not required to provide documentation verifying that their respective CAPTA self-certifications reflect actual practices.

With regard to CAPTA's GAL provisions, ACF draws a distinction between the State plan certifications and the actual appointment of GALs. ACF stated to OIG that the statute requires that States certify that they have in place "provisions and procedures" requiring GAL representation. According to ACF, this distinction means that the statute does not require that States in fact ensure that each child has such representation. In line with this interpretation, ACF stated that CAPTA does not provide the agency with the authority to monitor whether States effectively enforce their provisions and procedures and actually provide a GAL to every child victim.

Thus, ACF bases its determination of compliance simply on whether States have in place provisions and procedures requiring GAL appointments, regardless of whether

those requirements are effectively implemented and enforced. This means that even in a State that ACF deems compliant, some child victims may lack court representation to protect their best interests.

ACF has rarely reviewed whether any States are meeting CAPTA's GAL requirement, despite evidence of potential noncompliance

ACF's *Child Welfare Policy Manual* states that if the agency "is presented with evidence of potential deficiencies" within a State program, "action will be taken to verify whether a problem actually exists." For example, ACF officials stated that the agency could become apprised of potential compliance issues indirectly, through reviews not related to CAPTA requirements, or through other outlets such as the media and lawsuits.²¹ The *Child Welfare Policy Manual* further states that if ACF verifies that a deficiency exists, the agency will notify the State in writing and require it to take corrective action through a Program Improvement Plan within a specified timeframe. If the State fails to correct the deficiency within the timeframe, the State risks losing its CAPTA State grant funds.²²

In practice, however, ACF has not reviewed any State's compliance with the GAL requirement or imposed a Program Improvement Plan related to GALs since 2011.²³ This lack of oversight has occurred despite evidence that some States may be failing to provide GAL representation. For example, ACF's annual publication on child maltreatment data routinely reports low rates of court representatives being appointed. In fact, of the 36 States that reported appointment data to ACF for FY 2016, 32 States reported representation rates below 50 percent, 28 States reported rates below 25 percent, and 13 States reported rates below 10 percent that year.

ACF indicated that these data are unreliable. ACF's annual *Child Maltreatment* report states that the State-reported GAL appointment rates "are likely to be an undercount given the statutory requirement in CAPTA that says, 'in every case involving an abused or neglected child, which results in a judicial proceeding, a Guardian ad Litem... who may be an attorney or a court-appointed special advocate... shall be appointed to represent the child in such proceedings...'"²⁴ However, ACF staff acknowledged to OIG that the agency has no alternate data that contradict information provided by States. As previously mentioned, ACF staff also told OIG that CAPTA does not provide ACF with the authority to determine whether all child victims of abuse or neglect are in fact appointed GALs.

ACF suggested that rates below 100 percent might be partially explained by instances in which a child victim is determined to be a victim of abuse or neglect, but the courts are not involved. ACF also noted that in some States, GALs are not directly appointed by the court. However, ACF has not determined whether or to what extent low rates are attributable to these factors.²⁵

ACF provides limited guidance and minimal proactive technical assistance to States regarding CAPTA's GAL requirement

ACF officials reported that they are “technical-assistance focused” rather than prioritizing strict enforcement of CAPTA requirements or penalizing States for noncompliance. Although ACF provides technical assistance for policy-related activities—both directly and through the resource centers—States may not be aware of these opportunities. Only 4 of the 10 States in our review were aware that ACF offers technical assistance for establishing and enforcing GAL-related policies and procedures, and none of the 10 States received such technical assistance.

Additionally, ACF has issued limited guidance and regulation to assist States in implementing the CAPTA GAL requirement. ACF issued CAPTA regulations in the past but rescinded these regulations in their entirety in June 2015.²⁶ According to the agency, the regulations were out of date and unnecessary, as ACF “believe[s] the program requirements are made clear in the statute and [has] provided policy interpretations and program instructions to implement the program since 1996 in lieu of regulations.”²⁷ ACF has not issued any updated regulations that could assist States in interpreting and effectively implementing the CAPTA GAL requirement.

Moreover, ACF's *Child Welfare Policy Manual* and other policy issuances generally restate the language of the law without further detail.²⁸ ACF's guidance does not define terms that are vital to effective State implementation of the CAPTA GAL requirement. For example, CAPTA requires that GALs “make recommendations to the court concerning the best interests of the child”; however, neither CAPTA nor the *Child Welfare Policy Manual* recommends factors to consider in determining a child's “best interests,” and States have interpreted the requirement in different ways.²⁹ Similarly, because of reports that GALs were failing to meet with children and were making uninformed recommendations to courts, Congress added to CAPTA a requirement that GALs “obtain first-hand, a clear understanding of the situation and needs of the child.” However, ACF has not recommended standards, such as the number of visits that GALs should have with children, nor has it disseminated best practices to help States ensure that GALs spend sufficient time with children to effectively determine the children's best interests.

Although ACF has provided minimal guidance regarding the GAL requirement, the agency has taken some steps to encourage legal representation in child welfare proceedings more broadly. In 2017, ACF issued policy guidance to “emphasize the importance of high quality legal representation... for all parents, children and youth, and child welfare agencies in all stages of child welfare proceedings.”³⁰ The guidance includes best practices for attorneys representing parents, children, or agencies in child welfare proceedings. However, it is not specific to the GAL role and does not address the various nonattorney models that States employ to meet the GAL requirement (e.g., CASA-based). Additionally, in 2019 and 2020, ACF added policies to its *Child Welfare Policy Manual* to facilitate States' use of non-CAPTA Federal funding for independent legal representation by an attorney for children and their

parents undergoing foster care legal proceedings.³¹ In some States, this could provide additional funding for attorney GALs; however, States that use CASA models may be unable to utilize the funding to improve GAL representation.

Some States are unable to ensure that all child victims are represented in court, raising questions about ACF's reliance on States' self-certification

Six of the 10 States included in our review reported numerous challenges to meeting the CAPTA GAL requirement. As of March 2018, all 10 States had established laws and/or regulations requiring that each child victim be appointed a GAL;³² however, some States had no mechanisms for ensuring that these requirements are effectively implemented and enforced.

States reported numerous challenges to ensuring that every child is promptly appointed a GAL who can determine the child's best interests

Six of the 10 States we reviewed reported challenges, including:

- inadequate funding for GAL programs³³,
- an insufficient number of GALs to meet the increasing number of children requiring representation,
- unavailability of certain types of GALs, and
- judges not appointing GALs.

For example, one State official explained,

“During the last three years, the numbers of children in out-of-home care in [our State] have grown dramatically, largely in response to a nationwide epidemic of opioid abuse which has hit [our State] very directly. Despite infusions of additional resources [...], the increases in the number of judicial cases has outstripped the resources of the Program.”

Three of the six States that reported challenges said that as a result of these problems, they are not always able to assign a GAL to every child victim undergoing judicial proceedings despite self-certifying that they have a requirement to do so and that they enforce this requirement. One of the three States noted that during the time when children are on a waiting list for GAL appointments, their cases may be temporarily assigned to an advocate who reviews their paperwork. The State explained that it does not consider those children to have GAL representation as described in CAPTA, because the advocate in that scenario is not meeting with the

child or able to make informed recommendations to the court as the child's case proceeds.

Furthermore, some States that *did* report appointing a GAL to every child nonetheless faced challenges in ensuring timely and appropriate representation. One State reported that although no case will proceed without a GAL, one county had experienced difficulties in making prompt GAL appointments, thereby delaying some children's cases until a GAL became available. Additionally, some States reported that although every child has a GAL, the GALs have high caseloads. In one State, each GAL represents 200 children, on average. High caseloads may prevent GALs from obtaining a firsthand, clear understanding of the child's situation and needs as specified by CAPTA.

Some States have no systems in place to assess and ensure their own compliance with the CAPTA GAL requirement

Half of the 10 States in our review reported that they rely solely on presiding judges to ensure that each child victim in their courtrooms is appointed a GAL. These five States reported that they have not implemented any additional oversight mechanisms to enforce the requirement that every child receives a GAL, such as monitoring appointment data, reviewing case files, or conducting site visits.

States may not become aware of deficiencies because they do not proactively monitor their compliance with CAPTA's GAL requirement. Of the seven States in our review that reported assigning a GAL to every child victim undergoing a judicial proceeding, six said that they had not received complaints about representation and therefore assume that all children are appointed a GAL. (One State did not report whether it had received complaints.) Without proactively reviewing compliance and instead relying only on complaints for monitoring compliance, States may not be aware of deficiencies.³⁴

CAPTA also states that a GAL should obtain firsthand a clear understanding of the child's situation and needs. However, some States in our review reported that they lack oversight mechanisms to ensure that GALs meet with children outside of court to gather information about children's respective situations. Specifically, seven States reported conducting reviews to ensure that GALs meet with children, one State reported that judges are solely responsible for overseeing GALs in its courtrooms, and one State reported that it has no mechanisms for ensuring that GALs meet with children. The remaining State did not report whether it has oversight mechanisms to ensure that GALs meet with children. If GALs do not have sufficient contact with children outside the children's court appearances, they may not be able to make informed recommendations to the courts as to the children's best interests.

Several States described challenges to conducting oversight, including lack of mechanisms to monitor GAL appointments and activities; lack of authority to intervene with judges if the GAL requirement is not being met; and problems with

data (e.g., lack of a centralized database or unreliable data). These challenges prevent States from determining whether the GAL requirement is being met and taking action if it is not. As one State official reported, “[We] lack any enforcement mechanism in [our State]. We can’t even track our GALs, let alone look at the quality of their work except by going into the courts and watching them work, which is labor-intensive and somewhat subjective.”

Inaccurate and incomplete GAL data impede ACF’s ability to identify States that do not ensure all child victims receive court representation

CAPTA requires that States annually provide to ACF, “to the maximum extent practicable,” certain data elements, including GAL appointment data and data on GAL out-of-court contacts. However, ACF does not have the statutory authority to penalize States for nonreporting or for reporting inaccurate data.

State-reported GAL data could be a valuable source of information for ACF as to whether States are properly implementing the CAPTA GAL requirement. However, the agency stated that it cannot use GAL data for this purpose because State-reported GAL data are not complete or reliable and do not accurately represent States’ GAL-related activities. ACF’s annual public report on child maltreatment data includes GAL appointment figures with the caveat that they are “likely to be an undercount,” given the statutory requirement in CAPTA.³⁵ ACF considers one data element—the average number of out-of-court contacts between a GAL and a child—to be so unreliable that it does not include those figures in public reporting at all.

OIG’s review confirms ACF’s view that the data States currently report are inaccurate. State officials described technical challenges that impede reporting, such as a lack of centralized data systems and misalignment between States’ data definitions and those used by ACF. Additionally, some States face challenges related to communication between court or GAL program staff and child welfare agency staff.

ACF does not receive complete and accurate GAL data from States

OIG found that when States do report GAL data to ACF, the data are often inaccurate and do not reflect States’ actual GAL appointments and out-of-court contacts.

Many States do not report GAL data to ACF. In total, 14 of 52 States did not report GAL appointment data between FYs 2012 and 2016 and 44 of the 52 did not report GAL out-of-court contact data during this period.³⁶ For FY 2016 specifically, 36 States reported GAL appointment data and 8 States reported GAL out-of-court contact data to ACF.³⁷ The trend continues as we found that 15 States did not report FY 2018 GAL appointment data to ACF, and 42 States did not report GAL out-of-court contact data to the agency.³⁸

ACF receives inaccurate GAL data from States that do report. Of the 10 selected States in our review, 2 confirmed the accuracy of the FY 2016 GAL appointment figures that they reported to ACF.³⁹ Five States contradicted the GAL appointment figure they originally reported to ACF—sometimes by a substantial amount (see Exhibit 2). Finally, the remaining three States we reviewed did not report FY 2016 GAL appointment data to ACF.

Similarly, of the four additional States that had provided ACF with GAL out-of-court contact data and whose officials we interviewed, only one State confirmed the accuracy of the GAL figure that it had reported to ACF.⁴⁰

States reported that technical and coordination challenges impede their reporting of complete and accurate GAL data to ACF

All 10 States in our review reported challenges in collecting and reporting GAL data. Examples include:

- data are not consistently recorded on the local level by courts or GALs;
- data are maintained only at the local level and no mechanism exists to aggregate information at the State level;
- State-level data systems do not include data from all counties (for example, the database covers only counties that use volunteer GALs, omitting counties that use attorney GALs);
- data are maintained in court system databases or GAL program databases that are not linked to the child welfare data system that States use for NCANDS reporting;
- the field with data related to GAL appointments is not mandatory in the child welfare databases; and
- State data definitions differ from those necessary for NCANDS reporting.

Because none of the 10 States in our review reported out-of-court contacts to ACF in FY 2016, we interviewed 4 additional States that did report these data. These States reported benefiting from having a statewide database with GAL information and, in some cases, a collaborative relationship between the child welfare agency and other entities that provide GAL appointments.

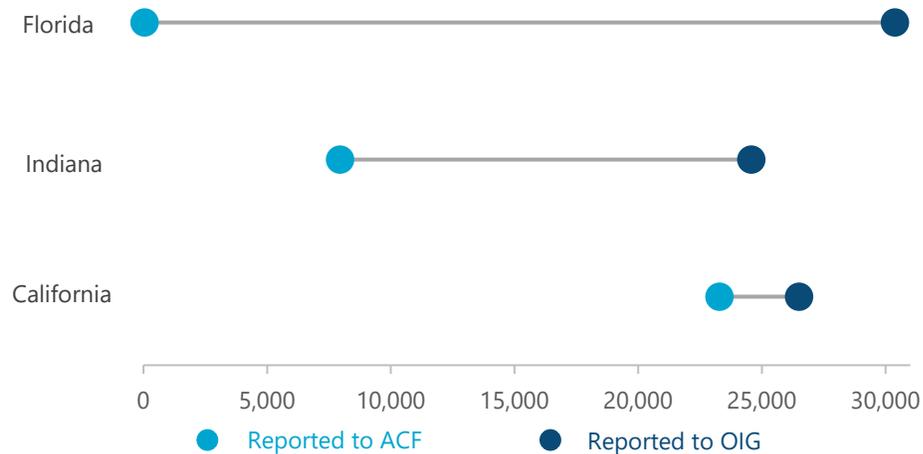
However, some States, including both those that reported out-of-court contacts and those that did not, described challenges related to communication between court or GAL program staff and child welfare agency staff. Court staff were not always aware that States' respective child welfare agencies needed data on GAL appointments and data on out-of-court contacts for NCANDS reporting. ACF assigns responsibility to NCANDS Primary State Contacts—who are employees of State child welfare

agencies—to coordinate NCANDS data reporting with other staff (e.g., court system staff) in their respective States.⁴¹

Some States have access to more complete and accurate GAL data than they report to ACF. Despite challenges, some States are capable of reporting more complete and accurate GAL data than what they currently report to ACF through NCANDS. Of the three States in our review that did not report GAL appointment data to ACF, two were able to provide OIG with those data.⁴² Additionally, of the five States that told OIG that the GAL appointment figure reported to ACF was inaccurate, three were able to provide a corrected figure to OIG (see Exhibit 2).⁴³

Further, although none of the 10 States that we reviewed reported data on GAL out-of-court contacts to ACF for FY 2016, most reported to OIG that they do track this information in some capacity, such as through attorney billing, visit notes, and local databases. However, they could not provide OIG with the average number of out-of-court contacts that GALs had with children.

Exhibit 2: Three States reported GAL appointment figures to ACF that differed from data reported to OIG.



Source: OIG analysis of FY 2016 NCANDS data and OIG survey data.

Note: California reported to OIG that its GAL-related data underwent analysis by the NCANDS Technical Team (an ACF contractor), which applied a separate methodology to determine the figure that would ultimately be submitted to ACF through NCANDS. California noted that the data it provided to OIG were consistent with the data it had originally provided to the NCANDS Technical Team.

Note: See Appendix A for detailed submission information for all 10 States OIG we reviewed.

RECOMMENDATIONS

Research has demonstrated that children with a court-appointed representative to advocate for their best interests, such as a GAL, have better outcomes. For example, they are less likely to remain in foster care long-term and are more likely to have their cases permanently closed.

Recognizing this, Congress sought to protect vulnerable children by including in CAPTA a requirement that each State not only must certify that it has in effect, but also *must enforce a State law or operate a Statewide program* that includes provisions and procedures requiring that every child victim be appointed a GAL to protect the child's best interests. Congress also included provisions in CAPTA that direct the Secretary, through ACF, to monitor States' compliance with CAPTA requirements. CAPTA further states that "the Federal Government should assist States and communities with the fiscal, human, and technical resources necessary to develop and implement a successful and comprehensive child and family protection strategy."⁴⁴

We found that ACF conducts little oversight and provides limited guidance to support States' compliance with and effective implementation of the GAL requirement. ACF officials reported to OIG that ACF does not have the authority to monitor whether States actually appoint GALs to all children. Instead, the agency relies on States' own assurances that they have, and enforce, provisions and procedures requiring that a GAL be appointed to every child victim and that these GALs have sufficient contact with children to understand children's situations and make informed recommendations to courts.

ACF's reliance on States' self-certification is concerning, because our review found that not all States have oversight mechanisms in place to ensure their own compliance. Additionally, three States in our review reported that as a result of significant challenges, they are not always able to assign a GAL to every child victim undergoing judicial proceedings. Further, because States do not report complete and accurate GAL data to ACF, the agency has no way of distinguishing poor data from actual failure to provide a GAL to every child victim.

Our findings demonstrate that ACF is neither supporting States in implementing the CAPTA GAL requirement, nor monitoring States' compliance with the requirement. As a result, ACF cannot ensure that all child victims of abuse and neglect have court representation to protect their best interests.

To address these vulnerabilities and better protect children, we recommend that ACF:

Conduct oversight activities to identify States that may not appoint a GAL to every child victim who undergoes a judicial proceeding, seeking statutory authority as necessary

ACF has not conducted reviews of any State's compliance with the GAL requirement in nearly a decade, despite evidence of potential noncompliance. ACF could more effectively oversee States' compliance by periodically reviewing States' practices, seeking statutory authority as necessary. This reviewing could include such steps as:

- requesting that States submit information supporting their self-certifications,
- conducting reviews of selected children's cases,
- conducting site visits,
- reviewing information on States' websites, or
- reviewing the integration of the CAPTA requirements into States' broader child welfare plans.

ACF need not conduct *all* of these activities, nor implement them for *all* States, to improve its oversight. Instead, to best use its oversight resources, ACF could prioritize its reviews to focus on States that appear to have greater vulnerabilities. For example, OIG has provided ACF with additional information about States that—from the information in our review—do not currently appoint a GAL to every child victim.

Proactively provide technical assistance to States that face challenges in appointing a GAL for every child victim

ACF and its funded resource centers should provide technical assistance to court system program staff and (if applicable) GAL program staff—i.e., staff in programs that are responsible for appointing GALs—as well as to child welfare staff. ACF should proactively provide technical assistance that addresses the significant challenges that States face in appointing GALs, including:

- inadequate funding for GAL programs
- an insufficient number of GALs to meet the increasing number of children requiring representation;
- unavailability of certain types of GALs, such as court-appointed special advocates; and

- judges not appointing GALs.

Our review found that as a result of these challenges, three of the 10 States we reviewed may not be able to assign a GAL to every child, and several additional States may not provide timely and appropriate representation. However, most States in our review were not aware that the agency offers technical assistance for the GAL requirement, and none received it.

Technical assistance should also focus on challenges that States face in assessing and ensuring their own compliance, including lack of mechanisms to monitor GAL appointments and activities; lack of authority to impose corrective actions on judges if the GAL requirement is not being met; and data issues (e.g., lack of a centralized database or unreliable data). Without the ability to conduct proper oversight, States will not be able to ensure on an ongoing basis that all child victims are appointed a GAL.

Proactively identify and address obstacles that States face in reporting complete and accurate GAL data

Complete and accurate State-reported GAL data would further support ACF's efforts to monitor and oversee States' compliance with the GAL requirement and would also enable ACF to more effectively target its technical assistance. However, ACF has acknowledged that the GAL data the agency currently receives are incomplete and inaccurate.

Two of the three States in our review that did not report GAL appointment data to ACF were able to provide such data to OIG. Additionally, three of the five States that had told OIG that the data they reported to ACF were inaccurate were nonetheless able to provide corrected figures in response to our request. These facts suggest that States are capable of more complete and accurate reporting but may need assistance to overcome the technical and coordination challenges that impede their ability to report these data to ACF.

To improve States' reporting, ACF should direct its contracted NCANDS Technical Team to work with the NCANDS Primary State Contacts to identify all possible data sources to assist States in reporting the most accurate and complete GAL data available. The Team should encourage each State's Primary State Contact to engage other State agencies (for example, court systems and GAL programs operated separately from the child welfare agency) to communicate the GAL requirement and technical assistance available.

In addition, some States told OIG that database issues have hindered their ability to collect and report GAL data to ACF. Therefore, ACF could assist States with developing solutions to improve the transmission of GAL data from court system databases and/or GAL program databases to each State's child welfare system

database. For example, ACF could share best practices and lessons learned from States in which child welfare and court staff successfully share GAL data.

AGENCY COMMENTS AND OIG RESPONSE

ACF did not explicitly concur or nonconcur with our three recommendations. ACF characterized OIG's recommendations as calling for "intensive monitoring, corrective action and penalties" and stated that the agency lacks statutory authority to pursue such an approach. The HHS Office of the General Counsel (OGC) separately wrote to OIG supporting ACF's interpretation of the statute.

OIG does not agree that our recommendations entail intensive monitoring; further, we did not recommend that ACF impose corrective action or penalties. Rather, OIG recommended measured steps that are at ACF's disposal and build on the agency's technical-assistance-focused approach to CAPTA oversight. OIG's recommendations could enable ACF to better assess States' provision of court representation, help States address challenges, and improve States' ability to provide ACF with complete and accurate data about court representation. Additionally, these steps could address OIG's finding that States do not always ensure that every child victim has a representative to advocate for the child's best interests—a finding that raises questions central to CAPTA's and ACF's shared goal of improving outcomes for children who have been abused or neglected.

First, OIG recommended that ACF conduct oversight activities—seeking statutory authority as necessary—to identify States that may not appoint a GAL to every child victim who undergoes a judicial proceeding. In response, ACF stated that it agrees that representation in court for child victims of abuse and neglect is critical, but that the agency does not have the statutory authority to monitor whether States appoint a GAL to every child victim. ACF also stated that such monitoring would be resource-intensive and that Congress has not provided additional funding for this purpose.

OIG's recommendation notes several possible mechanisms for increased oversight and explains that ACF need not conduct *all* of those activities, nor implement them for *all* States, to improve its oversight of the CAPTA GAL requirement. The agency could best use limited resources by prioritizing its oversight activities to focus on States that have greater vulnerabilities, such as the three States in our review that explicitly told OIG that they do not appoint a GAL to every child victim. If ACF believes that it lacks authority to conduct such monitoring, it could seek authority through the legislative coordination process for Executive Branch agencies as governed by the Office of Management and Budget Circular A-19.

ACF has stated its commitment to quality representation for children who have been abused or neglected. To that end, ACF has tools at its disposal—including seeking legislative change, if it deems it necessary—to ensure such representation. Although OIG believes that the statute supports the monitoring activities that we recommend, we recognize that ACF disagrees. Our review identified a critical vulnerability affecting abused and neglected children, and our recommendations to ACF are

intended to address this vulnerability so that the agency can more effectively support States' efforts to protect children's best interests. Given the Department's interpretation of the scope of ACF's statutory authority, OIG recommends that ACF seek legislative change as it deems necessary to allow the agency to better ensure quality representation for children.

Second, OIG recommended that ACF proactively provide technical assistance to States that face challenges in appointing a GAL for every child victim. In response, ACF explained that it has provided substantial technical assistance and other support to States to improve legal representation of children. ACF stated that the type of technical assistance that OIG recommends is beyond the scope of CAPTA, intensive, and unlikely to result in improved performance or better outcomes for children.

OIG recognizes that ACF and its funded resource centers provide assistance to States; indeed, our recommendation intentionally builds on ACF's technical-assistance-focused approach to CAPTA oversight. States reported significant challenges that in some cases prevent them from promptly appointing a GAL to every child victim, yet most States in our review were not aware that ACF offers technical assistance for the GAL requirement, and none received it. Efforts to improve technical assistance regarding court representation need not be "intensive," but they should be proactive (rather than being offered only at States' request) to bring additional focus to this critical child welfare issue.

Finally, OIG recommended that ACF proactively identify and address obstacles that States face in reporting complete and accurate GAL data. In response, ACF explained that its NCANDS Technical Team is continuing to work with States on improving States' reporting of GAL data. ACF stated that the methods OIG recommends to ACF are unrealistic and that modifications to State data-collection systems are not a prudent use of State resources. ACF said that it does not have the authority to resolve State-specific issues regarding coordination and data transmission challenges.

Complete and accurate State-reported GAL data would provide ACF with further information about States' implementation of the GAL requirement, enabling more efficient and targeted oversight and assistance. OIG recognizes the barriers that States face in reporting complete and accurate data. However, we found that States are often capable of more complete and accurate reporting but may need assistance to overcome the technical and coordination challenges that impede their ability to report these data to ACF. For example, two of the three States in our review that did not report GAL appointment data to ACF were able to provide such data to OIG. In addition, three of the five States that had told OIG that the data they reported to ACF were inaccurate were nonetheless able to provide corrected figures in response to our request. Further, we found that court staff were not always aware that States' respective child welfare agencies needed GAL data for NCANDS reporting. In fact, after OIG interviewed State staff for this study, staff in two States notified OIG that they will now coordinate with other agencies in their respective States to better report GAL data to ACF. This demonstrates that even modest steps to help States

coordinate can improve the reporting of GAL data. It further indicates that the NCANDS Technical Team's current technical assistance activities could be improved to target and address challenges that States face in reporting GAL data to ACF.

We ask that ACF clarify in its Final Management Decision its concurrence or nonconcurrence with each recommendation, and the steps ACF is taking to implement each recommendation.

For the full text of ACF's comments, see Appendix B.

APPENDIX A

GAL Appointment Figures That States Reported to ACF and OIG Differed for Several States

State	Reported to ACF	Reported to OIG
California	23,288	26,504
Florida	43	30,376
Georgia	5,193	5,193
Illinois	Unreported	Unreported
Indiana	7,946	24,569
Massachusetts	6,780	Unreported
Michigan	2,355	Unreported
New York	Unreported	19,927
Ohio	4,127	4,127
Texas	Unreported	19,090

Source: OIG analysis of FY 2016 GAL appointment data from NCANDS and OIG survey responses.

Note: Massachusetts and Michigan contradicted the GAL appointment figures that they had originally reported to ACF, but they could not provide OIG with corrected figures.

Note: California reported to OIG that its GAL-related data underwent analysis by the NCANDS Technical Team (an ACF contractor), which applied a separate methodology to determine the figure that would ultimately be submitted to ACF through NCANDS.

California noted that the data it provided to OIG were consistent with the data it had originally provided to the NCANDS Technical Team.

APPENDIX B

Agency Comments



ADMINISTRATION FOR
CHILDREN & FAMILIES

Office of the Assistant Secretary | 330 C Street, S.W., Suite 4034
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November 9, 2020

Ms. Suzanne Murrin
Deputy Inspector General
for Evaluation and Inspections
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Washington, DC 20201

Dear Ms. Murrin:

I am writing to provide the Administration for Children and Families' (ACF) response to the Office of Inspector General's (OIG) report, "ACF Cannot Ensure That All Child Victims of Abuse and Neglect Have Court Representation" (OEI-12-16-00120), which contains recommendations for the Children's Bureau (CB). I appreciate the OIG's review of this important issue and want to share information about CB's actions with regard to legal representation for children in foster care.

ACF believes that representation—particularly high quality legal representation—for children in foster care, candidates for foster care, and their parents is critical to ensure a well-functioning child welfare system. Research shows that early appointment of counsel in child welfare proceedings can improve case planning, expedite permanency for children, and lead to cost savings for state and tribal governments. CB communicates this message to the field by writing articles, conducting interviews, and speaking publicly about the need for families at risk of having a child placed into out-of-home care to have quality legal representation throughout the duration of their involvement with child welfare. CB has demonstrated leadership in highlighting the importance of legal representation and has used other legal authorities to support funding of independent legal representation in foster care proceedings.

However, as outlined in the attached memorandum from the HHS Office of General Counsel (OGC), we understand that the CB does not have the statutory authority to implement the OIG's suggested approach of intensive monitoring, corrective action and penalties with respect to the Guardian ad Litem provisions in CAPTA. The OIG's recommended approach also appears inconsistent with how the CAPTA State Grant program is structured. From our decades of experience implementing the CAPTA State Grant program and providing technical assistance (TA) to states, we understand that the primary challenge to states in providing legal representation to these children and parents is simply a lack of resources. As a programmatic matter, beyond the statutory authority issues

outlined by OGC, CB believes its current efforts to address this resource gap are a more effective approach than investing federal resources into intensive monitoring and withholding a portion of the limited funding states receive to address the many important CAPTA state plan requirements.

This is why, in recent years, CB has been proactive in taking actions to help states address this resource gap.

- In 2017, CB issued information on such research and guidance to the child welfare field and strongly encouraged all child welfare agencies and jurisdictions to work together to ensure that high quality legal representation is provided to all parties in all stages of child welfare proceedings.
- In 2018 and 2019, CB amended the Child Welfare Policy Manual to issue revised and new policies that allow title IV-E agencies to claim federal financial participation (FFP) for certain administrative costs of independent legal representation provided by an attorney per the Social Security Act (the Act) and current regulations.
- In 2020, CB responded to title IV-E agency and other stakeholder frequently asked questions about the aforementioned policies. CB also informed states and tribal grantees that they may use kinship navigator funds provided in accordance with title IV-B, subpart 2 of the Act to provide brief legal services to “assist kinship caregivers in learning about, finding and using programs and services to meet the needs of the children they are raising and their own needs,” which may include “support[ing] any other activities designed to assist kinship caregivers in obtaining benefits and services to improve their caregiving.” We are aware of at least four states and one tribe that are using kinship navigator funds for this purpose now. In addition, all kinship navigator programs are required to have information and referral services to link kinship caregivers to relevant legal assistance and help in obtaining legal services.

CB will continue this approach as it works towards the shared goal of ensuring that all children and parents receive high-quality legal representation during their involvement with the child welfare system.

OIG makes the following findings in its report:

- ACF does little to monitor or enforce States’ compliance with CAPTA’s GAL requirement, relying instead on states’ self-certification
- ACF has not reviewed in nearly a decade whether any States are meeting CAPTA’s GAL requirement, despite evidence of potential noncompliance
- Some States are unable to ensure that all child victims are represented in court, raising questions about reliance on self-certification
- Inaccurate and incomplete GAL data impede ACF’s ability to identify States that do not ensure all child victims receive court representation

We again refer to the attached legal memorandum from OGC, which provides HHS’s interpretation of the relevant statutory authorities. We note that several findings above are

based on a statutory interpretation that is inconsistent with that of OGC.

RECOMMENDATION 1: Conduct oversight activities to identify States that may not appoint a GAL to every child victim who undergoes a judicial proceeding, seeking statutory authority as necessary

ACF Response: As we have stated above, we agree that representation in court for child victims of child abuse and neglect is critical. However, as described in the memorandum from OGC, HHS does not currently have statutory authority for such oversight. No additional funding for monitoring of the CAPTA state grant program has been provided by Congress in any re-authorizations of the program, other than the recent increases targeted to address plans of safe care for substance-exposed infants made by Public Law 114-198, the Comprehensive Addiction and Recovery Act.

Scope, funding, and size of program. In the CAPTA Amendments of 1996, Congress specifically designed the CAPTA state grant program to be state driven and operated with minimal federal oversight and intrusion. Neither the statute nor the legislative history indicate that Congress intended for the increased level of intensive oversight and monitoring of states as recommended by OIG.

The CAPTA state grant program is one of the smaller federal programs supporting state child welfare services and provides formula grants to states to improve child protective service systems. Historically, annual funding for the program totaled approximately \$25 million. In fiscal year (FY) 2018 and FY 2019, funding increased to approximately \$85 million and in FY 2020 to approximately \$90 million. However, Congress directed that \$60 million of the increase in funding be prioritized for the development, implementation and monitoring of plans of safe care for substance-exposed infants, consistent with the requirement at section 106(b)(2)(B)(iii) of CAPTA. At the FY 2020 funding level, seven states receive grants of only \$186,000 to \$300,000, with most of the funding to be prioritized for meeting requirements relating to plans of safe care. As a programmatic matter, this leaves very little federal funding to address the GAL provisions or other purposes of the CAPTA grant.

Monitoring to be considered within the context of CAPTA. Federal monitoring of the CAPTA state grant must be considered in the context of the statutory language governing the program. Our approach to monitoring is consistent with statutory requirements as interpreted by OGC, funding for states, and federal staffing. We monitor CAPTA through statutorily required annual updates and our ongoing partnership with states in joint planning and oversight.

As stated above, the CAPTA Amendments of 1996 restructured, simplified, and streamlined the CAPTA state grant program in order to reduce the administrative burden on states. As such, Congress signaled with the use of “assurances” rather than “requirements” that federal scrutiny is reduced in lieu of state governor certifications that their CAPTA programs meet the requirements of the CAPTA state grant program. Once the assurance is submitted to the federal government, CB does not routinely verify assurances since the state has complied with the CAPTA statutory requirements. In addition, states must submit annual updates on their activities under or changes to its CAPTA plan.

As explained in Section 2.1, Question 2 of the Child Welfare Policy Manual, if there are instances in which CB is presented with evidence of potential deficiencies (e.g., through the child and family services program reviews or other sources), action will be taken to verify whether a problem actually exists. If a deficiency is verified, the state will be notified in writing and will be required to take corrective action within a specified timeframe. Funds will not be jeopardized unless the state fails to correct the deficiency within the specified timeframe.

However, the OIG recommends that CB go further than what the law requires to request that states submit information supporting their self-certification for the GAL representation provision, conduct reviews of selected children's cases, and conduct state site visits. These are highly resource intensive for both the federal government and states, go beyond current federal authority, and are not warranted considering the statutory requirements. Any determination of state compliance with the CAPTA statute must be based on whether a state has a provision or procedure requiring that a GAL be appointed in every case involving a victim of child abuse or neglect which results in a judicial proceeding, *not* how many GALs have been assigned.

Lack of legal authority to implement specific monitoring recommendations. The recommended level of scrutiny is out of proportion with this type of program, which is a formula grant program rather than a child specific entitlement. We also want to address the OIG finding that ACF could ensure states' compliance by seeking statutory authority as necessary. CB currently lacks the statutory authority to implement OIG's recommendation and would view it as inappropriate to either concur with a recommendation for which it lacks authority and resources, or speak to an intent to seek additional authority, outside of traditional legislative development channels within the Executive branch.

RECOMMENDATION 2: Proactively provide technical assistance to States that face challenges in appointing a GAL for every child victim

ACF does not review states' implementation of the GAL requirement, because it does not have authority to do so, as described in the memorandum from OGC. ACF has, however, provided substantial technical assistance and other support to states to improve the legal representation of children in the child welfare system. CB believes it is important to describe that information here.

Specifically, CB issued Information Memorandum [ACYF-CB-IM-17-02](#), the purpose of which was to encourage all child welfare agencies, courts, administrative offices of the courts, and Court Improvement Programs to work together to ensure parents, children and youth, and child welfare agencies, receive high quality legal representation at all stages of child welfare proceedings. We also released a [Technical Bulletin with Frequently Asked Questions on Independent Legal Representation](#). We believe this is the most appropriate focus of federal staff resources in the area of court representation for children, with the goal of being impactful and better serving children in the child welfare system.

ACF provides TA consistent with the statutory underpinnings. ACF provides TA as needed on a state specific level, to our program grantees, when requested or necessary to meet a program requirement. For example, in regards to the Policy Manual change that allows title IV-E agencies to claim FFP for legal representation, our Capacity Building Center for Courts

(CBCC) has provided tailored TA to state Court Improvement Programs (CIPs) and child welfare agencies in developing infrastructure, policies, and evaluation approaches to facilitate approvable plans. The CBCC and CB have also repeatedly encouraged states to explore this option and other practices to strengthen legal representation for children during constituency events.¹ Since 2017, the Child Welfare Capacity Building Collaborative, including the CBCC and the Center for States, has provided tailored TA to 26 states on topics relating to legal representation, involving over 430 hours of consultation. Our ongoing partnership and work with states in joint planning and oversight gives us insight into states' needs so we can mobilize resources when requested, and provide the assistance needed to continuously improve their ability to respond to and prevent child abuse and neglect. To facilitate coordination between the CAPTA state plan and title IV-B, CB continues to require that the annual report describing use of CAPTA funds be submitted with the Annual Progress and Services Report (APSR).

TA for State monitoring is outside the scope of the law. The type and manner of TA recommended goes beyond the scope of what is required by the CAPTA statute. The OIG recommends that TA should also focus on challenges that states face in assessing and ensuring their own compliance, including the lack of mechanisms to monitor GAL appointments, and the lack of authority to impose corrective actions on judges if the GAL requirement is not being met. This appears to be based on findings that states do not monitor themselves and implies that CAPTA requires states to conduct monitoring of their implementation of the GAL provision. As discussed in the memorandum from OGC, the statute does not require that states analyze their practices, and therefore this would be an inappropriate use of federal resources and outside the scope of the requirement. As we have indicated, states are only required to provide an assurance/certification. For example, state child welfare agencies are not required by statute to have systems in place to verify GAL appointments with courts, over which they have no authority; or to proactively monitor individual GAL appointments.

Unrealistic expectations for ACF TA. The types of TA recommended for ACF to provide to CAPTA grantees are unlikely to result in improved performance or better outcomes for children, since such efforts would be unlikely to have an impact on such things as inadequate funding, judicial behavior, the insufficient number of volunteers, or available CASAs. Further, we do not believe it is appropriate or effective to focus intensive TA on this one assurance in isolation. In recent years, CB has refocused its TA to provide capacity building services to child welfare agencies and the courts, through the Child Welfare

¹ For instance, on March 7, 2017, a virtual event was held to give an overview of the Children's Bureau Information Memorandum of legal representation. This event included presentations by a child welfare agency representative and children's and parents' attorneys. Also in 2017, the CBCC sponsored a series of day-long, in-person CIP regional meetings, focused on strengthening joint projects between CIPs and child welfare agencies, most of which included some aspect of improving legal representation. In 2018, a series of four CIP virtual events were held devoted to applying continuous quality improvement in legal representation. On June 16, 2020, a CIP call discussed ensuring procedural fairness, equity, and access to justice for all families. Participants discussed the role of quality legal representation in safely preventing unnecessary entry of children into foster care and analysis to address and reduce racial disparities in child welfare.

Capacity Building Collaborative, comprised of the Center for States, the Center for Tribes and the Center for Courts. The most intensive, state-specific type of assistance is provided through tailored services. For tailored services, Centers partner with jurisdictions and use an assessment process to identify strengths and needs. They then develop a work plan for jurisdictions that decide to engage in services. The work plan outlines the activities of the jurisdiction and the services provided by the Center for States to achieve the desired enhancements in organizational capacity and practice improvements. This integrated, assessment-driven approach to capacity building, that engages all key stakeholders in the jurisdiction is far more likely to yield improved outcomes for children and families, than federally driven TA on an isolated topic.

RECOMMENDATION 3: Proactively identify and address obstacles that States face in reporting complete and accurate GAL data

As noted in the 2018 Child Maltreatment report, the NCANDS Technical Team is continuing to work with states on improving reporting in this area, even though NCANDS is a voluntary system. The NCANDS Technical Team regularly addresses data quality issues with states in order to improve NCANDS reporting. This occurs through a yearly webinar series, in addition to individualized state TA. Information regarding changes in reporting or data quality is provided by states and made available to the public in the yearly Child Maltreatment report. The report's language implies that the work mentioned above is not happening, which is not accurate.

NCANDS reporting on this item is, consistent with the statute, the number of children for whom individuals were appointed by the court to represent the best interests of children. As such, this data does not account for attorneys who represent children but are not appointed by the court, such as with locations that have institutional legal representation providers that manage their own case assignments automatically when petitions are filed, meaning that this data is underrepresented and is only a subset of the children who are represented in court.

The OIG notes that per CAPTA, the state is to report NCANDS data “to the maximum extent practicable,” which means that reporting is not mandatory. In implementing the NCANDS, we have encouraged states to report fully on all fields, but ultimately, NCANDS is a voluntary system, leaving it to states to determine what NCANDS data fields they are able to report.

Data cannot be used for compliance. The basis for the OIG's recommendation appears to be a misunderstanding that complete and accurate state-reported GAL data “would further support ACF efforts to monitor and oversee states' compliance with the GAL requirement.” This is not true for several reasons. ACF does not monitor compliance with the GAL assurance through this data. As described in the memorandum from OGC, the statutory requirement is for the state to have “provisions and procedures” for appointing GALs, and there is no associated data reporting requirement. Furthermore, the NCANDS reporting on this item is, consistent with the statute, the number of children for whom individuals were *appointed by the court* to represent the best interests of children. As such, this data does not account for attorneys who represent children but are not appointed by the court, such as with locations that have institutional legal representation providers that manage their own case assignments automatically when petitions

are filed, meaning that this data is underrepresented and is only a subset of the children who are represented in court.

Methods recommended for ACF to assist states are unrealistic. As a programmatic matter, we note that the OIG's recommendations for the type of assistance that ACF should provide to improve reporting on this data field are unrealistic. These suggestions appear to be related to resolving state specific issues and are mostly outside the purview of ACF's authority. It would not be in CB's jurisdiction, for example, to follow the recommendation that we work directly with states to improve the transmission of GAL data from court system databases and/or GAL program databases to the state's child welfare system.

Not a prudent use of resources. The OIG may not be aware that this recommendation comes with a cost at both the state and federal levels, and that it is costly for states to make even minor changes to data collection systems. The OIG predicts that if states had assistance from ACF, they could overcome the technical and coordination challenges that impede their ability to report these data to ACF. We disagree that the assistance described is within our role and believe many states would not view it as a prudent use of resources for a voluntary data collection. The level of resources needed to implement this has the potential to exceed the total funding available under the CAPTA state grant program for many states.

State reasons for not reporting are valid and complex. The OIG points to technical and coordination challenges that are barriers to state reporting the GAL data field. The OIG may not recognize that the barriers states face are valid, significant, and in most cases not something the federal ACF staff have jurisdiction over or an ability to assist or influence. The report notes that data are not consistently recorded on the local level by courts or GALs and data are maintained in court system databases or GAL program databases that are not linked to the child welfare data system that states use for NCANDS reporting. Multiple states have provided reasons for not consistently reporting these data. In many cases, child welfare agencies do not house the data, and have no authority over the work of the courts or GAL programs, and thus are unable to mandate that these entities provide this data or link to child welfare systems. As explained in the Child Maltreatment 2018 Report State Commentary, states have noted that the data are maintained in court system databases or GAL program databases that are not linked to the child welfare data system that states use for NCANDS reporting. In many instances these data are not collected at the family level, creating difficulty in making meaningful inferences about GAL involvement.

We would like to note that ACF places a high value on complete and reliable data and is supportive of states using their resources to meet statutorily required mandates. In fact, ACF is currently providing assistance to states on implementing the AFCARS final rule. Unlike the GAL data field, this data set is statutorily required, used for monitoring and program purposes, and carries a penalty for non-compliance.

Again, I appreciate the opportunity to review and comment on this report. Please direct any follow-up inquiries to our OIG liaison Scott Logan, Office of Legislative Affairs and Budget, at (202) 401-4529.

Sincerely,

A handwritten signature in blue ink that reads "Lynn A. Johnson". The signature is written in a cursive style.

Lynn A. Johnson,
Assistant Secretary
for Children and Families

ACKNOWLEDGMENTS AND CONTACT

Acknowledgments

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Contact

To obtain additional information concerning this report, contact the Office of Public Affairs at Public.Affairs@oig.hhs.gov. OIG reports and other information can be found on the OIG website at oig.hhs.gov.

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ENDNOTES

¹ P.L. No. 93-247, Jan. 31, 1974. Codified at 42 U.S.C. §§ 5101 – ff.

² CAPTA § 106; 42 U.S.C. § 5106a.

³ U.S. Department of Justice, Office of the Inspector General, Audit Division, *National Court-Appointed Special Advocate Program*, Audit Report 07-04, December 2006.

⁴ Abramson, S., “Use of Court-appointed Advocates to Assist in Permanency Planning for Minority Children.” *Child Welfare*, 70(4), 1991, 477-487.

⁵ Brennan, K., Wilson, D., George, T., McLaughlin, O., University of Washington School of Social Work and Washington State Center for Court Research, *Washington State Court Appointed Special Advocate Program Evaluation Report*, 2010.

⁶ CAPTA § 106(a); 42 U.S.C. § 5106a(a).

⁷ CAPTA was last reauthorized on December 20, 2010, by the CAPTA Reauthorization Act of 2010 (P.L. No. 111-320) and certain provisions of the act were amended on January 7, 2019, by the Victims of Child Abuse Act Reauthorization Act of 2018 (P.L. No. 115-424).

⁸ CAPTA also identifies the Federal government’s role in research, technical assistance, and data collection activities. It also provides grants to public agencies and nonprofit organizations; establishes the Office on Child Abuse and Neglect; and establishes a national clearinghouse of information relating to child abuse and neglect.

⁹ CAPTA § 106(b)(1)(A); 42 U.S.C. § 5106a(b)(1)(A). A State is required to update its State plan if it makes changes to its policies and programs, or if new provisions are added to CAPTA as a result of amendments.

¹⁰ CAPTA § 106(b)(2)(B)(xiii) and 42 U.S.C. § 5106a(b)(2)(B)(xiii). Requirements for which States must provide assurances are listed in sections 106(b)(2) and 113 of CAPTA.

¹¹ CAPTA §106(b)(2)(B)(xiii); 42 U.S.C. §5106a(b)(2)(B)(xiii).

¹² CAPTA §106(d). Data elements that States report are listed in § 106(d)(1) through § 106(d)(18). Data are reported based on the FY calendar, which begins on October 1st and ends the following September 30th. Given that States are required to report data only to the maximum extent practicable, States may not report information related to all National Child Abuse and Neglect Data System (NCANDS) elements annually, depending on their data capabilities and other factors. Of the 56 States that receive CAPTA grant funding, 52 report data to ACF through NCANDS. Because they receive CAPTA funding as part of a consolidated award pursuant to 42 U.S.C. § 1469a(c), American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands do not report CAPTA data to ACF.

¹³ The field is one of the 30 “Services Provided” data elements in NCANDS. These data elements contain information about services that are provided for the child or family. Examples of other NCANDS service fields are family preservation, case management, counseling, and employment services.

¹⁴ Currently, the contractor that serves as the NCANDS Technical Team provider is a company named WRMA. Each State is assigned an NCANDS Technical Team Liaison who works directly with the NCANDS Primary State Contact.

¹⁵ Annual *Child Maltreatment* reports are publicly available at <https://www.acf.hhs.gov/cb/research-data-technology/statistics-research/child-maltreatment>.

¹⁶ ACF funds the Child Welfare Capacity Building Collaborative, which consists of three centers that provide technical assistance: (1) the Center for States, which serves certain child welfare agencies; (2) the Center for Courts, which serves Court Improvement Programs; and (3) the Center for Tribes, which serves certain tribal child welfare agencies and consortia. For more information, see <https://capacity.childwelfare.gov/>.

¹⁷ We used the unique count of child victims to select the 10 States that had the largest number of child victims of abuse and neglect in FY 2016. This field counts a child once, regardless of the number of times the child was the subject of a CPS report.

¹⁸ These 10 States accounted for 58 percent of total child victims in FY 2018 and 48 percent of total CAPTA grant funding for States that year.

¹⁹ CAPTA § 114; 42 U.S.C. § 5108.

²⁰ ACF, *Child Welfare Policy Manual*, § 2.1, Question 2.

²¹ Examples of non-CAPTA related reviews include Title IV-B and Title IV-E State plan updates and Child and Family Services reviews.

²² ACF, *Child Welfare Policy Manual*, § 2.1, Question 2.

²³ ACF told OIG that in 2011, one State was required to complete a Program Improvement Plan to address several CAPTA provisions, including the CAPTA GAL requirement. ACF said that the State did not have legislation in effect to address GAL training requirements specified under CAPTA § 106(b)(2)(B)(xiii).

²⁴ For example, see ACF's statement on the limitations of GAL appointment data in ACF, *Child Maltreatment 2016*, p. 80. <https://www.acf.hhs.gov/sites/default/files/cb/cm2016.pdf>

²⁵ ACF's annual *Child Maltreatment* publication reports the percentage of all child victims who received court representation. The report does not attribute low representation rates to victims without court involvement or to GALs who are not directly appointed by the court, nor did the 10 States that OIG reviewed raise these as factors that would explain low representation rates or data discrepancies.

²⁶ The rescinded regulations included more specific requirements regarding GALs. For example, now-rescinded 45 CFR § 1340.14 stated that to qualify for CAPTA State grants, in every case involving an abused or neglected child that results in a judicial proceeding, the State must ensure the appointment of a GAL or other individual whom the State recognizes as fulfilling the same functions as a GAL, to represent and protect the rights and best interests of the child. This requirement may be satisfied (1) by a statute mandating the appointments; (2) by a statute permitting the appointments, accompanied by a statement from the Governor that the appointments are made in every case; (3) in the absence of a specific statute, by a formal opinion of the Attorney General that the appointments are permitted, accompanied by a Governor's statement that the appointments are made in every case; or (4) by the State's Uniform Court Rule mandating appointments in every case. However, the GAL shall not be the attorney responsible for presenting the evidence alleging child abuse or neglect.

²⁷ *Technical Regulation: Removal of Child Abuse and Neglect Prevention and Treatment Act Implementing Regulations*, 80 Fed. Reg. 16577-16579 (March 30, 2015).

²⁸ ACF, *Child Welfare Policy Manual*, § 2.1D. ACF, program instruction ACYF-CB-PI-11-06, April 28, 2011, <http://www.acf.hhs.gov/sites/default/files/cb/pi1106.pdf>. Accessed on September 8, 2019. ACF, *NEW LEGISLATION—Public Law 111-320, the CAPTA Reauthorization Act of 2010*, program instruction ACYF-CB-IM-11-02, February 15, 2011, <http://www.acf.hhs.gov/sites/default/files/cb/im1102.pdf>. Accessed on September 8, 2019.

²⁹ For example, 8 of the 10 States that we reviewed require the GAL to represent the child's best interests. One State requires the GAL to represent the child's expressed wishes rather than best interests; the tenth State requires best interest representation under some circumstances and requires expressed wishes representation for all children.

³⁰ ACF, *High Quality Legal Representation for All Parties in Child Welfare Proceedings*, information memorandum ACYF-CB-IM-17-02, January 17, 2017, <https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf>. Accessed on October 2, 2020.

³¹ ACF, *Child Welfare Policy Manual*, § 8.1B, Questions 30, 31, and 32.

³² Eight of the 10 States require the GAL to represent the child's best interests. One State requires the GAL to represent the child's expressed wishes rather than best interests; the tenth State requires best interest representation under some circumstances and requires expressed wishes representation for all children.

³³ OIG interviewed States about challenges meeting the GAL requirement prior to ACF's recent guidance explaining that States may claim Title IV-E administrative costs for independent legal representation by an attorney for children and their parents undergoing foster care legal proceedings. *Child Welfare Policy Manual*, § 8.1B, Questions 30, 31, and 32. In some States, this could provide additional funding for attorney GALs; however, States that use CASA models may be unable to utilize the funding to improve GAL representation.

³⁴ A December 2019 report by the Boston Globe and ProPublica found that most States—including several of the six States in our review that said they had not received complaints about lack of GAL representation, as well as others—do not fully comply with the CAPTA GAL requirement. See: Palmer, Emily and Huseman, Jessica, "The federal government has one main law to prevent child abuse. No state follows all of it," *The Boston Globe*, December 13, 2019. Available at <https://www.bostonglobe.com/metro/2019/12/13/cry-for-help/prT5xvp27BGZK6AZQWRNVL/story.html>.

³⁵ ACF includes this disclaimer about GAL appointment data in its *Child Maltreatment* reports. For example, see ACF, *Child Maltreatment 2016*, <https://www.acf.hhs.gov/sites/default/files/cb/cm2016.pdf>.

³⁶ OIG analysis of FY 2016 GAL appointment data from NCANDS. Also see ACF, *Child Maltreatment 2016*. ACF excludes a State's GAL appointment data from the *Child Maltreatment* report if the State reports that fewer than 5 percent of victims were appointed a GAL. For FY 2016, the agency excluded GAL appointment data from 11 States.

³⁷ OIG analysis of FY 2016 GAL data from NCANDS. Also see ACF, *Child Maltreatment 2016*. Data on GAL out-of-court contacts are not published in the *Child Maltreatment* report because ACF has determined that the data are not reliable.

³⁸ OIG analysis of FY 2018 GAL data from NCANDS. Also see ACF, *Child Maltreatment 2018*. Data on GAL out-of-court contacts are not published in the *Child Maltreatment* report because ACF has determined that the data are not reliable.

³⁹ Neither State that confirmed ACF's GAL appointment figure was able to provide OIG with supporting documentation.

⁴⁰ The State was able to provide OIG with documentation to support its submission to ACF.

⁴¹ Staff in two States later notified us that they will now coordinate with other agencies in their respective States to better report GAL data to ACF.

⁴² Both States were able to provide OIG with documentation to support their GAL appointment figures.

⁴³ All three States that provided a GAL appointment figure to OIG were able to provide OIG with supporting documentation.

⁴⁴ CAPTA § 2, No. 14; 42 U.S.C. § 5101, Note.