

Standby Guardian Laws Training Curriculum

The American Bar Association
Center on Children and the Law

and

Circle Solutions, Inc.

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Preface

Training Design

The training modules included in this curriculum are designed as “stand-alone” materials that may be presented as separate training sessions (e.g., as a 1-hour educational session), a comprehensive package (e.g., combined sequentially for an all-day training), or in any combination, depending on the audience.

Modules have been designed so that they can be used with various training approaches. For more traditional conference presentations, modules can be used to design lectures. For workshops, there are discussion questions and interactive activities. For more in-depth skills-building programs, there are case studies, role-plays, and other experiential learning activities. Trainers can adapt the modules to meet audience needs and create appropriate audiovisual materials and participant handouts from the materials included in this manual.

Each module provides between 60 and 90 minutes of content plus interactive exercises, case studies, and discussion questions. The interactive exercises will increase the 1-hour timeframe, but still allow for the trainer to have the option of a longer session or to reduce the content presentation in favor of more interactive and experiential learning.

The legal module was developed collaboratively by Circle Solutions, Inc. and the American Bar Association.*

Target Audience

* This training curriculum was originally developed and pilot tested at the request of Family, Advocacy, Care and Education Services (FACES) and AIDS Law of Louisiana. Thus, Louisiana State law is represented in these materials.

These modules can be adapted to a variety of service providers, including clients and their families, as well as prospective guardians. Providers include medical staff, case managers from community-based organizations, HIV service providers, attorneys, mental health providers, clergy, and judges. While this curriculum was developed for and pilot tested in the State of Louisiana, trainers may adapt these training materials by incorporating the laws of their own States.

Support Materials

Included in the manual are interactive exercises, case studies, and a reference list for use by trainees.

Curriculum Modules

Module 1: Overview of Permanency Planning

- Defines and describes permanency planning.
- Discusses why permanency planning is important to children’s future.
- Discusses what birth parents need to know.
- Provides information on what new parents and families need to know about their responsibilities and available support services and resources.
- Provides basic information about legal options and processes.

Module II: Assessing Client Readiness for Permanency Planning

- Identifies personal barriers to readiness.
- Identifies psychosocial issues that impact client readiness to discuss permanency planning.
- Provides strategies and interventions that can enhance client receptivity to permanency planning.

Module III: Legal Issues

This module has two sections—one for non-attorney audiences and the other for attorneys.

Non-attorney or Multidisciplinary Audience

- Describes the roles of the multidisciplinary team needed to create a successful permanency plan. The team includes the client.

- Provides information on the basic legal options available to families.
- Describes various confidentiality and other significant client relationship regulations, as well as boundaries of the legal profession and how they differ from those for social workers and case managers.

All Attorney Audience

- Describes the roles of the multidisciplinary team needed to create a successful permanency plan. The team includes the client.
- Describes the duration, process, and power of an array of permanency planning legal tools. Provides citations for each legal tool.
- Describes various confidentiality and other significant client relationship regulations, and discusses boundaries of the legal profession and how they differ from those for social workers and case managers.

Module IV: Provider Issues

- Discusses systems barriers to permanency planning, including various professional approaches to the issue and poor communication.
- Identifies counter-transference issues common to HIV service providers who work with families and children.
- Discusses the importance of flexibility, communication, networking, and support.
- Provides strategies that address systems and individual challenges to permanency planning work with families living with HIV.

Module I

Overview of Permanency Planning

CONTENT POINTS**(60 minutes)**

Introduction/Opening

- Most parents with a chronic or terminal illness put their children's well-being ahead of their own.
- For these parents, children often provide a source of strength and motivation.
- One way parents demonstrate their love is to ensure that their children are safe and well-cared for, even if the parents are unable to provide that care themselves.
- Early custody or permanency planning provides a way for parents to help explore ways they can best secure their children's future care and well-being.

Workshop Goals

- Learn how early future planning can benefit parents and children.
- Learn legal custody planning options.
- Learn what prospective families and guardians need to know.

Permanency Planning

(or whatever term you feel best suits your audience)

- A multidisciplinary process that enables parents to develop a legally binding plan for the care and well-being of their children should the parents die or become too incapacitated to care for their children.
- The process requires legal assistance with custody arrangements.
- Also crucial to the process are social services that assist parents through the complex psychosocial issues permanency planning raises.
- When legal and social service providers work together as a team, parents are more likely to complete permanency planning.
- No plan is perfect and most are potentially vulnerable. However, a multidisciplinary approach is best equipped to help parents understand and cope with the limitations of various options and develop the most realistic and viable plan for their children.

Benefits of Early Permanency Planning to Parents and Their Children *(Provide case examples)*

- Because permanency planning is often a complex psychosocial and legal process, the sooner parents start the process, the more likely they will be able to complete it before they become incapacitated. It's also easier to do when one is healthier.
- Early planning can alleviate the stress parents might feel about their children's future should the parents become incapacitated and unable to care for them. Having a plan can also alleviate some of the children's anxiety about their future.
- Alleviating stress can help prevent unnecessary weakening of an HIV-positive parent's immune system since it is commonly known that stress weakens the immune system.
- Early planning enables parents to identify the potential guardian sooner, thus giving everyone involved more time to build relationships and adjust to this new family formation. The added time also facilitates an easier transition when the new guardian becomes active.
- Early planning gives the parents, guardian, and lawyer more time to complete the complex legal process and overcome any potential obstacles to the custody plan (e.g., an absent father contesting the plan).
- Early planning gives the children involved more time to become aware of, accept, and adjust to the difficult transition that will eventually take place.

If Parents Wait Too Long or Don't Make a Plan *(Provide case examples)*

- Without a plan, the local social services agency or child welfare agency takes over the custody and care of the children, regardless of any informal arrangements the parents made.
- Without legal authority, an informal guardian or other family member cannot enroll children in school, make decisions about their medical care, or sign for a child to obtain a driver's license.
- When an informal guardian needs to obtain authority to act as a legal guardian, and the child or children have an absent parent, the court will have to search for the absent parent. The absent mother or father has parental authority, even if that parent's relationship with the children has been nonexistent or questionable.
- If parents wait until the end stages of AIDS, they may be too physically ill or mentally compromised to complete a viable permanency plan.
- If a parent completes the plan during the end stages of AIDS, others can more easily challenge the plan, claiming the parent was not mentally competent enough to make a valid plan or was more susceptible to the undue influence of others.

Steps in the Permanency Planning Process

- Introduce the concept of permanency planning—this often needs to happen repeatedly with varying degrees of detail and depth, based on the client's readiness.
- Assess client interest, need, and readiness to move forward in the planning process.
- Assess the client's family and family support system.

- Assist the family in resolving barriers to permanency planning; make referrals to other needed support services.
- With the client, explore guardian choices and guardian eligibility criteria.
- Educate the client about the lawyer's role and discuss available legal guardianship options.
- The client then meets with a lawyer to further discuss legal options.
- The client chooses a guardian, decides on a legal strategy, and begins legal proceedings.
- The client explores entitlement programs for the children and the new family/guardian.
- The client receives continued psychosocial support and services.
- If the client's circumstances change over time, the client can change the custody plan.
- After legal arrangements are completed, new and existing families receive followup assistance and advocacy as needed.

What Prospective Guardians Need to Know

- Their legal rights and responsibilities
- Available support services for them and the children they are taking into their families to facilitate family adjustment and coping with grief and loss
- Available entitlement programs and other sources of financial assistance
- If children from one family are divided among other guardians, who those guardians are and how to work together to enable the children to stay in touch
- Any special medical needs of the child, especially if the child also has HIV
- What values, customs, beliefs, family history, and legacy the parents want the guardian to pass on to their children.

Louisiana's Legal Options

- A thoughtful plan is better than no plan. Later on, the plan can be changed if it no longer fits the family's needs.
- The most secure legal plans transfer all legal responsibility for the child to another adult. (**Adoption** is an example.)
- If the transfer of responsibility is just between two parents, one of whom currently is caring for the child and the other who is not, there can be a **voluntary transfer of custody**.
- In Louisiana, there is no guardianship law. However, an **act of tutorship** can permit an adult to manage a child's property and make guardian-like decisions about the child's upbringing.
- Older teenagers may be ready to make certain important decisions without adult consent. The legal strategy for them could be **minor emancipation**.

- Secure legal plans are backed by a court order.
- When a parent cannot, or will not, go into court, there are helpful legal strategies that are shorter term and less secure for the child. These include a ***provisional custody by mandate***, which permits an adult to act on behalf of a parent (e.g., to enroll the child in school or obtain medical care for the child).
- A parent can name a particular adult to be future caretaker for the child in a ***will***. However, there often is a time gap between the parent's death and the court's approval (probate) of a will, during which the child might be without a legally secure home. Also, the court may reject a will, leaving the child without a plan.
- A parent has most assurance that a child's future will be safe when the court approves a plan before custody has to transfer from the parent to the new caregiver.

Local Resources

- Review or provide a handout that lists local resources.
- If time permits, or depending on the audience's need and interest, provide contact information and discuss how best to access resources most relevant to current audience.

General Information Module

INTERACTIVE EXERCISES

Brainstorming

- Before providing the content points on “Benefits of Early Permanency Planning,” have participants brainstorm a list of advantages. You can also chart them on newsprint.
- You can also have participants brainstorm a list of consequences if parents don’t develop a permanency plan before providing the content points from “If Parents Wait Too Long....”

Small Group Discussions and Reporting Out

- If someone asked you to be a prospective parent or guardian, what would you want to know? Encourage participants to explore not only legal rights and responsibilities, but also psychosocial issues.
- You can use this question before the section on “What Prospective Parents Need to Know,” then use the content points to summarize.
- In your current job, what role might you play in assisting an HIV-positive parent with permanency planning? How might you raise the issue; what other community service providers would you involve in this process?

Note to Trainers: You can use this question after the “Steps in the Permanency Planning Process” section or just before the “Local Resources” section.

Module II

Assessing Client Readiness for Permanency Planning

CONTENT POINTS	<i>(60 minutes)</i>
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Introduction/Opening

- It is difficult for most parents to make permanent plans for their children.
- For parents with HIV/AIDS, the stigma of HIV often adds to the overwhelming challenge of dealing with premature death and its impact on surviving children.
- Given the numerous psychosocial barriers to permanency planning, how can one best assess the appropriate times and ways to raise the issue with clients? How can we help prepare clients to engage in this process?

Workshop Goals

- Identify psychosocial barriers to permanency planning.
- Identify factors that affect a client's readiness to engage in permanency planning.
- Learn strategies for overcoming client barriers to permanency planning.

Barriers to Permanency Planning *(provide more specific client examples)*

Barriers tend to fall under the following categories:

- | | |
|----------------------------|---|
| • Avoidance | too hard to confront the issues, too distressing for parent and children. |
| • Denial | parent is feeling fine and believes nothing will happen, planning isn't important or a priority now. |
| • Procrastination | no sense of urgency and too busy taking care of other more important things such as food or shelter needs, children's behavioral problems, etc. |
| • Lack of information | misinformation or no information about permanency planning, especially the legal issues and services available. |
| • | Personal beliefs talking about bad things will make them happen, why jinx things when they're going well? |
| • Available family members | parent has healthy spouse or other available family members and assumes they are willing and able to care for children, may have made informal arrangements with family and feel that's sufficient. |
| • | Conflict of Interest when the children's and parents' interests and desires do not coincide. |

- **Fear of Losing Control** parents may feel they are losing control over their family once they begin developing future custody plans, especially once they choose a guardian and begin introducing that person or family into their own. If there is no potential guardian, parents also may have fear of dealing with the child welfare bureaucracy and losing their children to the system.

Factors Impacting Client Readiness

Studies (see reference list) have shown that the following factors influence client readiness:

Client health status

- More ill clients tend to complete a permanency plan more quickly.
- Poor health creates a greater sense of urgency.
- Plans completed during the later stages of illness may be more vulnerable to challenges based on mental incompetence or undue influence.

Current family relationships/situation

- The less complex and problematic the family situation, the more likely the parent is to complete a permanency plan.
- Parents who have chosen a guardian who already has a good relationship with the children are also more likely to complete permanency plans.
- Families with unstable relationships, an absent biological parent, or other problems are less likely to initiate permanency planning.

Psychosocial barriers

- Grief and loss issues, especially if others in the family are HIV-positive or if the family has experienced other recent losses.
- Struggles with survival needs such as food, housing, poverty, and unsafe neighborhoods.
- Drug use or mental illness.
- Children's school or behavioral problems.

Legal problems

- **Parents' drug use.**
- **Fear of losing children to the child welfare system upon initiating permanency planning legal processes.**
- **Fear of meeting with a lawyer if there are perceived other legal problems that threaten family unity (e.g., immigration issues, drug use).**

Race, ethnicity, culture

- For some racial/ethnic groups, fear of involvement with the legal or child welfare system due to past experiences or a history of mistrust.
- Cultural and religious beliefs that view permanency planning as unnecessary or inappropriate.

Stigma of HIV and ensuing disclosure issues

- Fear of how relatives and other potential guardians and their families might react when they find out that the parent (and possibly the children) have HIV; most parents fear upsetting current family relationships, criticism or rejection of their children, or being judged for engaging in high-risk behaviors.
- Handling disclosure of the parent's diagnosis and the permanency plan to the children; most parents are very protective but there are usually disparities between what parents think children know and what the children actually understand.

Ambivalence about permanency planning and possibly the new guardian

- Relief in having a plan, but distress over the idea of giving up one's children to someone else.
- Parents may experience competition with the potential new family, fear being supplanted too early, feel jealous, or take out their own frustrations on the potential guardian and risk alienating the new family.

Social worker's or case manager's relationship with the client

- Parents who have positive long-term relationships with their caseworkers are more likely to complete permanency plans when those workers are involved in the permanency planning process.
- Parents who have social workers or case managers who act as service gatekeepers and help prepare the current and potential new family for permanency planning are more likely to complete legal process

Strategies for Enhancing Client Readiness

Assessing client readiness is an ongoing process that should occur throughout the social worker's relationship with the client. The following strategies will assist social workers and case managers in helping their clients deal with permanency planning for their children:

Client Relationship

- Build a solid relationship with parents before discussing the issue in detail.
- Avoid the "trap" of arguing for permanency planning—especially when parents are hesitant or undecided. The ambivalent parent then has to assume the role of defending the other "side" or status quo.
- Engage the client as an equal member of the permanency planning team.
- Try to enhance the parent's sense of control over the process by discussing all options available for each child—which also ensures more informed decision-making.
- Review parents' responses to permanency planning information already given to them or discussed previously.
- Allow the parent to make all decisions, but be honest and nonjudgmental in your response.

Raising the Issue

- Raise the issue early and throughout the relationship. Early on, suggest that permanency planning is an important topic to consider and assess the parents' initial reaction. If the client resists the suggestion, don't pursue the issue further, but try again later.
- Find opportunities to raise the topic in a positive way that builds on the parent's strengths (i.e., love and commitment to the child, strong desire to keep the children together).
- Raise the issue as one that all parents need to address; any parent could encounter unforeseen accidents (e.g., getting hit by a bus)—this normalizes the issue.
- Be sensitive to cultural needs—try to reframe permanency planning in culturally appropriate terms.

Psychosocial Issues

- Identify specific psychosocial and emotional barriers to the process; work with the client to find solutions or resolve issues (e.g., counseling for family problems or the parent's ambivalence about the issue, drug treatment, resolution of legal or immigration issues, or HIV education for the potential guardian or the client's extended family).
- Coordinate your efforts with those of other service providers working with the client on permanency planning or related issues.
- Assess the family's support system; encourage the parent to involve the support system appropriately in the permanency planning process.
- If you need to involve child welfare agencies, assess the parent's perception and past relationship with those organizations to facilitate building a sound relationship between the client and child welfare service providers.

Client Assessment Module

INTERACTIVE EXERCISES

Brainstorming

Notes to Trainers: Before discussing the barriers to permanency planning, ask participants to think about what it would be like for them to make a permanency plan for their children. Ask participants who do not have children to imagine what it would be like.

Ask participants to call out the issues that occur to them when they think about making a permanency plan (or issues that were raised when they actually made a plan). List issues on newsprint. Ask participants to identify emotions and feelings that these issues created. Acknowledge that most people find the topic difficult to discuss and that many healthy parents have not made plans for their children.

Now ask participants to think about how a client with HIV, a single mother with four children, someone who is poor and has drug problems, etc., is likely to feel about having to think about the issues that participants identified.

You also can conduct this exercise in small groups, with each group reporting to the large group about the issues and feelings that each small group identified as being involved in permanency planning.

Record responses on newsprint or have each group chart its own list and post them when they report out.

If time is limited, ask participants these questions:

- What makes permanency planning a difficult topic to discuss?
- Why might a parent with HIV want to avoid discussing or developing a permanent plan for his or her children?

Client Testimony

If you have a willing and appropriate client, invite the client to discuss with the group his or her personal experiences with permanency planning. Ask the client to describe:

- How the parent overcame personal barriers to discussing the issue.
- How the parent worked with various service providers.
- What approaches to permanency planning providers used that were helpful or unhelpful.

Facilitate a question and answer session between participants and the client.

Screen for appropriate client presenters. Clients should be comfortable disclosing their HIV status and some personal information in front of an audience and be able to convey information clearly. Be sure to spend some time helping clients prepare (and possibly practice) their presentations. Inform clients of potentially controversial topics. If clients still choose to discuss these issues, help them frame issues so that the audience will be more receptive and less judgmental.

Case Studies

Use client case studies that depict different stages of readiness and various complications that might deter parents from doing permanency planning. Ask participants to break into small groups. Pose the following questions:

- What barriers to permanency planning exist in this case?
- What strategies can you implement to eliminate these barriers and increase client readiness to make a permanent custody plan for his or her children?
- At what point might you suggest the client see an attorney?

Note to Trainers: Because role plays provide participants with an opportunity for skills building, you may want to use a case study to conduct a “fish bowl” role play. Using this technique, the trainer takes the role of client, and participants play a case manager, social worker, or lawyer.

You should conduct the fish bowl type of role play only if you have sufficient time for adequate debriefing, as well as role playing.

Instructions for Fish Bowl Role Play

1. Ask each participant to review a case study and then answer questions about the case study.
2. Inform participants that the trainer will take the role of client; participants will take the roles of social worker or case manager.
3. The trainer will sit at the front of the room facing participants. Six participants will sit in a semicircle facing the trainer. These participants will play the case manager/social worker. Another six participants should stand directly behind the seated participants. The participants who are standing will act as “coaches,” assisting those playing the case manager.
4. The trainer will begin the conversation by addressing one of the seated case managers, engaging that person in a 2- to 3-minute conversation. If the case manager has difficulty answering questions, he or she should say “Pause” and consult with his or her coach. When ready to begin again, the case manager will turn back to the trainer and say “Play.” The conversation can then resume.
5. The trainer will move to the next case manager so that the client “meets” each case manager/social worker. The trainer should ensure that the conversation progresses. The case managers will need to listen to the entire conversation because when the trainer switches, the next case manager will have to pick up the conversation where the previous one left off.
6. After all case managers have had a chance to participate, the trainer will end the role play and ask each case manager to briefly discuss their reactions—what they did well and what was difficult. The coaches can then comment and provide feedback. Those participants who did not have roles as case managers or coaches also should offer their comments. After all participants have had an opportunity to comment, the trainer should offer his or her feedback.
7. It is helpful to set some ground rules for the feedback session. Comments should be specific and constructive. Encourage participants to try not to duplicate comments. Those receiving feedback need to listen without becoming defensive or debating their performance.
8. If time permits, the trainer can conduct more than one case study so that more participants have an opportunity to play a role. Trainers may prefer to rerun the same case study but take a different role. For example, when using the “Lizette” case study, the trainer could also play her mother or 10-year old son. For the “Gina” case study, the trainer could play one of the foster parents or her 12-step friend. In the “Peter” case study, the trainer may prefer to play “Debbie” or one of Peter’s parents.

Tips for Conducting Fish Bowl Role Plays**Notes to Trainers**

1. Remember that your role is to provide an opportunity for participants to build their skills. Therefore, do not select client cases that are so difficult that participants become completely overwhelmed or discouraged. Assess participants' capacity to engage in role playing and portray a client that is challenging but not impossible to reach.
2. The more realistic your portrayal of the client, the more real the role play becomes for participants and the more they can benefit and learn from the experience. Draw from your own clinical experiences to portray clients as realistically as possible. Include appropriate body language and nonverbal cues.
3. If you observe that a participant is having difficulty, even with the coach's help, move on to another issue or try to approach the issue in a different way.
4. To keep everyone alert and focused, once you start the role play, randomly choose which "participant service provider" you will address next rather than select the next "actor" in a linear fashion.
5. When delivering feedback, offer positive comments as well as suggestions for improvement. Be as specific as possible to maximize learning.

Case Study**LIZETTE**

Lizette is a 30-year old African American woman and single mother with AIDS. She has four children, aged 2, 4, 7, and 10. Lizette is currently on SSI, and doing well on combination therapy. She lives with her mother who is 58 years old. Her mother is a retired teacher and has a small pension, plus her deceased husband's Social Security benefits.

Three of Lizette's children have different fathers. Her 7-year old's father has had no contact with the family for 5 years. No one knows where he is. The father of the two youngest children, Lizette's husband, lived with the family until he died of AIDS last year. Lizette does not know the identity of her oldest child's father, and no one has ever claimed paternity.

The children know that their father/stepfather died of AIDS. Lizette has never told her children that she too has HIV, saying it would be too traumatic for them after her husband's death. Her mother agrees with Lizette. Both are still grieving and do not feel that they will be able to deal with the children's possible reactions to Lizette's having the same disease that caused her husband's death.

In addition to dealing with her grief, Lizette also feels no sense of urgency about developing permanent custody plans for her children. She says she is healthy and feels fine. She also argues that her children can continue to live with her mother if something should happen to her, and her mother is family after all.

At this time, Lizette's main concern is her oldest child. Three months after his stepfather died, he started having behavior problems at school and his grades have gone down. When the social worker/case manager talked to him briefly during a home visit, he asked why his mother has to take so many pills all the time. Before the social worker/case manager could respond, Lizette returned to the room and her son ran off.

Case Study**GINA**

Gina is a 29-year-old white woman with two children, a 14-year old daughter and 12-year old son. Her son was diagnosed with attention deficit disorder and has learning disabilities that necessitate special classes at school.

Five years ago, both children spent 9 months in separate foster homes while Gina was in a court-ordered residential drug treatment program. Since then, she has successfully completed the program and has remained sober. She had a minor relapse when she tested HIV-positive 3 years ago. Because of her history and a recent abnormal Pap smear, her physician suggested she get an HIV test.

Gina never married the father of her children. He lives in the next town and has had an on-again/off-again relationship with Gina and the children. He has never paid child support. He continues to use drugs occasionally but has more of a problem with gambling. Since Gina's health began deteriorating, he has stopped calling and visiting.

Currently, Gina is in poor health. She can no longer tolerate any combination therapies and is undergoing chemotherapy for cervical cancer. The social worker/case manager has helped her obtain the services of a home health aide.

Gina's children are very upset. Her son is acting out. Although her daughter has become the dependable primary caregiver at home, she has started acting out in school and falling asleep in class.

Gina is terrified that her children will end up back in the child welfare system. Her parents are deceased, and she has no siblings or other relatives. She knows she needs to have a custody plan for her children because of her health. She is adamant about keeping them out of foster care, and she wants them to be able to stay together. Unfortunately, Gina does not know any potential guardian, especially someone that is willing and able to deal with her son's problems.

Gina has a close friend from her 12-step program that gets along with her children and visits often. Although Gina has no relationship with them, her children have remained friendly with their respective foster parents. Gina is terrified that as her health deteriorates, the State will intervene and take custody of her children again.

Case Study**PETER**

Peter is in his late 30's and has three children, aged 8, 10, and 14. His wife died in a car accident 5 years ago. Peter never remarried, but for the past 2 years, he has had a steady live-in girlfriend, Debbie. Debbie and the children get along well.

After his wife's death and before he met Debbie, Peter had sexual relationships with several different men, something he tells you he's always wanted to explore, but didn't feel he could while he was married. Peter was raised in the Catholic religion, but stopped going to church once he started having relationships with men. He continues to struggle with guilt about this period in his life. His guilt became more intense once he found out about he acquired HIV—one of his former male partners tested positive and suggested Peter get tested.

Currently, Peter is healthy and doing well on combination therapy. He is concerned about his children's future, and he knows that he needs to make some provisions to ensure their well being. This perception is reinforced by the unexpected death of his wife.

Peter wants his children to stay with Debbie should something happen to him. However, his parents do not like Debbie and are very unhappy that she and Peter are "living in sin." They think Debbie is a bad influence on the children and remind Peter that she was arrested years ago for writing bad checks when she had a drinking problem.

Peter says Debbie and he have decided to get married if that will make it easier for her to become the children's guardian. Both fear Peter's parents will try to get custody of the children or undermine her relationship with them. Peter does not want his children to be raised "oppressively Catholic" as he was. Also, both Peter and Debbie are concerned about Debbie's ability to financially support the family on her current salary as a grocery store clerk.

Module III
Legal Issues: Non-Legal Providers

CONTENT POINTS*(60 minutes)***Introduction**

- Children from families living with HIV need legal plans that assure a secure future for them, if and when their parents become unable to care for them.
- There is no such thing as a general legal plan that would fit all children in this situation.
- A good legal plan for children depends on the facts in each particular family (e.g., whether the children have different fathers, whether the chosen guardian can keep the children together, etc.).
- Louisiana has an array of legal tools that can be used to create plans ranging from long-term and very secure to short-term and very simple.
- Most good legal plans are developed through teamwork by a parent, social worker, and lawyer.
- Parents can be empowered by developing a plan for their children. It is a way to express love and be involved in their children's futures.

Workshop Goals

- Recognize the elements that make a secure legal plan for a child.
- Identify a number of legal strategies available to Louisiana families.
- Learn how a lawyer, social worker, and client work as a team to create a legal plan.

Differences Between Lawyers and Social Workers/Case Managers

- Lawyers and social workers work with families in different ways.
- A social worker can represent the interests of everyone in a family unit.
- A lawyer usually represents only one person in the family. In developing a plan for the children, a lawyer usually will represent what the caregiving parent wants for the children.
- Even though the lawyer and social worker have different ways of working with families, a good legal plan for children can be developed if they work as a team with the parent.

Teamwork to Develop a Legal Strategy

Social Worker's/Case Manager's Role

- The social worker often is the first to meet a family. A social worker sees the family often. The social worker usually will be the lead partner in the team.
- The social worker will explain to the parent the need for a legal plan to protect the children's future.
- The social worker will explain to the parent how the lawyer will help the parent choose a plan, develop it, and see it through the court, if necessary.
- The social worker will provide psychosocial support for the family throughout the process.
- The lawyer will manage the legal case.

Lawyer's Role

- The lawyer will meet with the parent and listen to facts about the family.
- The lawyer will recommend a legal strategy that will secure the children's future with the new caregiver. The lawyer will be prepared to advise on alternative strategies as well.
- The lawyer will help the parent implement the chosen legal plan, and advocate for the parent in court, if the plan requires a court hearing.

Parent's Role

- The parent will sign a consent to share personal information with both the lawyer and social worker.
- The parent will choose a preferred future caretaker, after discussing suitability and eligibility with the social worker and lawyer.
- The parent will choose a preferred legal strategy, provide facts about the family necessary to implement the plan, and appear in court if necessary.

Choosing the Best Legal Plan

- A thoughtful plan is better than no plan. Later on, the plan can be changed if it no longer fits the family's needs.
- The best legal plan usually is one that protects the children from having to change caregivers after the plan takes effect.
- The most secure legal plans transfer all legal responsibility for the child to another adult. **Adoption** is an example.
- If the transfer of responsibility is just between two parents, one of whom currently is caring for the child and the other who is not, there can be a **voluntary transfer of custody**.

- In Louisiana there is no guardianship law. However, an **act of tutorship** can permit an adult to manage a child's property and make guardian-like decisions about the child's upbringing.
- Older teenagers may be ready to make certain important decisions without adult consent. The legal strategy for them could be **minor emancipation**.
- Secure legal plans are backed by a court order.
- When a parent cannot, or will not, go into court, there are helpful legal strategies that are shorter term and less secure for the child. These include a **provisional custody by mandate**, which permits an adult to act on behalf of a parent (e.g., to enroll children in school or obtain medical care for them).
- A parent can name a particular adult to be the future caregiver for the child in a **will**. However, there often is a time gap between the parent's death and the court's approval (probate) of a will, during which the child might be without a legally secure home. Also, the court may reject a will, leaving the child without a plan.
- A parent has most assurance that a child's future will be safe when the court approves a plan before custody has to transfer from the parent to the new caregiver.

Finding Help

- Social workers, other providers, and parents in New Orleans can contact FACES, an organization that has provided services and case management for women and children with medical and poverty problems since 1988 (504) 821-4611.
- Legal help is coordinated through AIDS Law of Louisiana, which offers education and general legal counseling. AIDS Law will help locate a lawyer for the family. Case managers at FACES (504) 568-1631 often make contacts with AIDS Law.

Legal Issues Module: Non-Legal Providers**INTERACTIVE EXERCISES****Case Study: Part I**

Note to Trainers: This case study has two parts. You can use Part I after reviewing the content points in “Teamwork to Develop a Legal Strategy.” The goal of Part I is to demonstrate that the social worker is an active team member in developing the legal plan.

In order to start the discussion the trainer can introduce one or two of the following questions:

- Has Antoinette ever expressed an interest in caring permanently for your children?
- Has Antoinette provided care for the children recently?
- How old is Antoinette?
- Does Antoinette have any children of her own?
- Does Antoinette live in your town, or would the children have to move?
- Is Antoinette’s home big enough for a family of four, or would she have to move?
- Are there other family members who have expressed interest in the children?

Note to Trainers: If participants fail to include any of the issues covered by these questions, be sure to mention them before moving on.

Case Study: Part II

Note to Trainers: The goal of Part II is to help participants develop a sense of what makes a secure legal plan for children. Use Part II after discussing the content points in “Choosing the Best Legal Plan.” Have participants return to Jeanette’s case study and provide the following information:

Assume that Jeanette definitely wants Antoinette to be the caregiver. As Jeanette’s lawyer, what questions would you ask her before recommending a legal plan for the children?

In order to start the discussion, the trainer should introduce a few of the following questions:

- How likely is it that Ralph, the father, would ask for custody of his two children?
- Is Ralph in jail?
- Is it known for certain that Ralph has a heroin habit? Is there a possibility that he might now be rehabilitated?
- Has a court ever declared Ralph to be unsuitable as a father?
- When was the last time you heard from Ralph?
- Ralph is the father of two of the children. Where is the father of the third child?

- How old are the children?
- Would you be willing to transfer some responsibility for the children to Antoinette right now?

Note to Trainers: If participants omit any of the issues covered by these questions, be sure to mention them before moving on.

Case Study:

Jeannette

Jeanette is raising her three children, working to support the family, and also receiving medical treatment for HIV. If she should become incapacitated or die, she wants her children to stay together as a family unit. Jeanette fears that Ralph, the father of two of the children, will try to take her children. Jeanette is strongly critical of Ralph, whom she believes is still using heroin. Jeanette wants her sister Antoinette to take the children. Antoinette is single and has a job as a schoolteacher.

Note to Trainers: Ask participants to response to the following:

As Jeanette's *social worker*, what questions would you ask Jeanette to determine whether or not Antoinette is a suitable permanent caretaker for the children?

Legal Issues Module: Attorney Training**CONTENT POINTS****(60 minutes)****Introduction**

- New Orleans has one of the highest rates of HIV infection in the Nation.
- In New Orleans, as in the rest of the country, the need for services is shifting from the gay male population to families headed by a single adult.
- It is vital for lawyers to help parents develop a secure legal plan for the future of the children. Otherwise, children can be orphaned or cast into the foster care system.
- Sound legal planning depends on the lawyer working as a team with the parent and social worker.

Workshop Goals

- Learn how a lawyer, social worker, and parent work as a team to create a legal plan.
- Identify the elements that make a legal plan secure for children.
- Understand the benefits and problems of applicable Louisiana laws.
- Know the major resources for referral and support of lawyers.

Teamwork to Develop a Legal Strategy**Social Worker/Case Manager's Role**

- The social worker often is the first to see the family. A social worker sees the family often. The social worker usually will be the lead partner in the team.
- The social worker will explain to the parent the need for a legal plan to protect the children's future.
- The social worker will explain to the parent how the lawyer will help choose a plan, develop it, and see it through the court, if necessary.
- The social worker will provide psychosocial support to the family throughout the process.

Lawyer's Role

- The lawyer will manage the legal case.
- The lawyer will meet with the parent and listen to facts about the family.
- The lawyer will recommend a legal strategy that will secure the children's future with the new caregiver. The lawyer will be prepared to advise on alternative strategies as well.

- The lawyer will help the parent implement the chosen legal plan, and advocate for the parent in court, if the plan requires a court hearing.

Parent's Role

- The parent will sign a consent to share personal information with both the lawyer and social worker.
- The parent will choose a preferred future caregiver, after discussing suitability with the social worker and lawyer.
- The parent will choose a preferred legal strategy, provide facts about the family necessary to implement the plan, and appear in court, if necessary.

Note to Trainers: Attorneys may have concerns about confidentiality and other aspects of working as a team. Give examples of successful teamwork and address any concerns they might have.

Legal "Tools"

Adoption

- Duration: Forever
- Process: Full court hearing; orders
- Power: Complete transfer of parental powers to adoptive parents
- Cite: R.S. 9:421 et seq., 9:436; LA. Civil Code art. 214 et seq.; Children's Code, art. 1122, 1167 et seq.

Provisional Custody by Mandate

- Duration: Earlier of 1 year or until 15 days after the death of parent(s); renewable; reversible.
- Process: Notarized signatures, 2 witnesses.
- Power: Gives named person power to act on behalf of parent.
- Cite: R.S. 9:951 et seq.

Voluntary Transfer of Custody

- Duration: Revocation or terms of the judgment
- Process: Written petition; mandatory court hearing unless court waives it.
- Power: Parent with custody can transfer custody to noncustodial parent.
- Cite: L.A. Children's Code art. 1510 et seq.; LA Uniform Transfer of Minors

Act of Tutorship

- Duration: Depends on tutorship
- Process: Court order unless one of child's parents dies, then generally the other parent has tutorship of the child.
- Power: Responsible for child's upbringing and managing child's property.
- Cite: LA Civil Code art. 246 et seq.; R.S.9:601 et seq.; LA Code of Civil Proc. art. 4261 et seq.

Act of Nomination

- Duration: Earlier of minor's death, minor's 18th birthday.
- Process: Will, trust, deed, designating a beneficiary of contractual rights.
- Power: Over minor's property
- Cite: R.S. 9:751-753

Will

- Duration: Indefinite, or according to will's terms
- Process: Court probate; subject to court approval
- Power: Depends on deceased's wishes and court approval of those wishes
- Cite: LA Civil Code art. 1536 et seq.

Minor Emancipation

- Duration: Indefinite
- Process: Court hearing; orders
- Power: Allows a minor to make certain decisions without parental or tutor consent
- Cite: LA Civil Code art. 365, et seq.; LA Code of Civil Proc. art. 3991-4

Potential Additional Tools:**Petition for Custody (Some judges may be willing to consider this option.)**

- Duration: Depends on court
- Process: File a petition, serve any surviving parent and court hearing
- Power: Depends on court but could be used to take care of child, obtain medical care, enroll the child in school, etc.
- Cite: None

Conditional Procuration

- This option may allow an agent to make decisions for the child when two physicians agree that the parent is disabled.
- As this law applies to property, use of the law will depend on Louisiana's view that children are property.
- Conditional procuration seems to differ from provisional custody by mandate, medical power of attorney, and general power of attorney in that it takes effect in the future if need arises. It is not immediately effective. This strategy is relatively untried in the child welfare field.
- Cite: R.S. 9:3890.

Resources for Referral and Support

- Lawyers can look to AIDS Law of Louisiana for information on applicable law, legal process, and education (504) 568-1631.
- FACES is the primary social service and case management agency for women and children who have medical and poverty issues (504) 821-4611.
- Referrals for attorneys usually will come from AIDS Law of Louisiana. Case managers in FACES contact AIDS Law when their families are ready to develop a plan.

INTERACTIVE EXERCISES**Case Studies**

Note to Trainers: Use the case studies after the “Array of Legal Tools” section.

If used as a large group exercise, explain the facts of one of the case studies, and ask participants to discuss what would be the most suitable legal plan for the children. You can use the same procedure for the second case study.

If used as a small group exercise, two groups should use different case studies to develop a legal plan, and then report out results to the large group.

Case Study**MARIA AND MIGUEL**

Maria is raising five children, but they have much contact with Miguel. The children consider Miguel to be their father, even calling him “Father” although he is, in fact, the biological parent of only one of the children. The two other fathers have no contact at all with the family—one is in prison serving a long-term sentence; the other has disappeared. Miguel helps the family financially, and the children often drop by his house on weekends and always go with him to an annual reunion of extended family members. Miguel says he wants the children to live with him when and if Maria can no longer care for them. Maria agrees that this is the best plan.

Case Study**CAMILLE**

The father of Camille’s two daughters, to whom Camille was married, died 8 years ago. Since then, Camille and her daughters have been living with Jake. Camille, Jake, and her two daughters were subjects of a neglect-abuse case 2 years ago. Jake was suspected of abusing one of the girls, and the court ordered him out of the home. When closing the child abuse case, the judge said to Camille, “You have shown terrible judgment in permitting that man into your life. Be more careful in the future. I never want to see you or these poor children in court again.”

Camille cut off all contact with Jake. Now that she has discovered her rapidly progressing illness, she has decided that when she is unable to care for the children, her best friend Tanya should take her place. Camille is worried, however, that the paternal grandparents, who maintain a keen interest in the children, will intervene. Camille doesn’t feel that she can go to court again to settle the issue. In Camille’s small town, there are only two judges to hear all the cases, so it is quite likely that she would appear before the same judge that heard the neglect-abuse case. Camille fears, “That judge will take my kids.”

Module IV Provider Issues

CONTENT POINTS*(60 minutes)*

Introduction

1. HIV is a multigenerational disease with deaths, losses, and adjustments occurring across generations.
2. Most families living with HIV/AIDS live in poverty in inner-city or rural areas and have numerous and complex needs that make coordinated care problematic.
3. These families present numerous challenges for service providers in custody planning.
4. Challenges to service providers are both personal and systemic.

Workshop Goals

- Identify systems challenges to providing coordinated permanency planning services.
- Help service providers identify personal challenges to discussing permanency planning with HIV families.
- Develop strategies for overcoming personal and systems challenges.

Systems Challenges

- ❑ Various service agencies and professional disciplines differ in how they approach client problem solving and treatment. At times, these approaches may seem incompatible; for instance, a social worker's client may be an entire family, while a lawyer can have only one client at a time.
- ❑ Various professions and organizations may also operate under laws and policies that require them to handle client confidentiality and information sharing differently.
- ❑ When the same family requires assistance from numerous providers from various disciplines, different approaches to client relationships and problem solving can lead to fragmented client care and conflict among providers.
- ❑ The following provider-related issues also may lead to less-than-optimal client care:
 - ❑ lack of cooperation
 - ❑ poor communication
 - ❑ unresolved conflict
 - ❑ unclear roles and responsibilities
 - ❑ different priorities
 - ❑ lack of information about each discipline's approach to problem solving
 - ❑ cultural insensitivity.

Systems Strategies

Providers need to:

- Agree on flexible but shared approaches to client needs assessment and problem solving.
- Clearly define their roles and responsibilities for each other and the client.
- Obtain necessary releases so they can share client information and still respect confidentiality.
- Provide cross-training to fill in knowledge gaps across disciplines and services.
- Openly and respectfully discuss their progress and share relevant new information about the client's case.
- Include the client as an equal member of the team.
- Agree on an identified "gatekeeper" or service coordinator (usually a social worker or case manager) to work with the client to ensure that all providers have the information necessary to do their jobs.

Individual Challenges

Counter-transference issues with clients include:

- **Stigma and Fear of Contagion:** The fear that the social worker/case manager could get HIV by interacting with the client, which could lead to:
 - avoiding HIV-positive clients.
 - displaying anxiety in their presence so that the social worker/case manager cannot focus on client needs or listen to what the client is saying.
 - not wanting anyone else to know that the social worker/case manager is working with HIV-positive clients, thus limiting the social worker's ability to obtain needed support from other colleagues or service providers.
- **Feelings of Powerlessness:** The social worker/case manager wishes that he or she could do more and feeling frustrated, angry, inadequate, or overwhelmed, which could lead to:
 - distancing oneself from clients.
 - overstepping appropriate boundaries.
 - becoming inappropriately annoyed or angry with clients.
- **Over-identification with the client:** The social worker/case manager sees him-or herself in the client and then projects his or her own issues to the client, which could lead to:
 - feelings of failure if client disagrees.
 - inappropriate boundaries.
 - colluding with the client to avoid discussing uncomfortable issues.
- **Fantasies of omnipotence:** The social worker/case manager considers him-or herself the expert and that the social worker's relationship with the client can lead to increased survival time for the client or promote more changes in the family than are realistic, which could lead to:
 - unrealistic expectations of the client and family.
 - anger, frustration, and feelings of failure when clients demonstrate resistance or do not fulfill the social worker's expectations.
 - patronizing the client.

- **Confronting one's own mortality** : In helping the client confront his or her illness and mortality, the social worker/case worker may become increasingly uncomfortable with how the client's issues cause the social worker to face his or her own mortality, which could lead to:
 - unwillingness to raise permanency planning or related issues with clients.
 - presenting permanency planning in such a way that minimizes its importance and discourages discussion.

- **Different cultural values and spiritual beliefs:** The social worker/case manager feels uncomfortable if the client has beliefs that differ from the social worker's, which could lead to:
 - avoidance of discussing these issues.
 - cultural insensitivity or culturally inappropriate behavior.
 - judgmental responses when clients express their beliefs.

- **Feelings of grief and loss:** The social worker/case manager will have to cope with his or her own feelings of grief and loss when the client's health begins to worsen. At the same time, the social worker/case manager is expected to continue to support the family, which could lead to:
 - avoiding the client and family.
 - burnout.
 - feeling inadequate.
 - losing hope.
 - feeling less willing to work with other HIV families.

It is also important to note that these responses are common and it is helpful to discuss them with others to allow us to provide the best possible care for our clients.

Strategies for Overcoming Personal Challenges

There are a number of strategies that the social worker/case manager should be aware of in dealing with the challenges described above. The social worker should also be prepared to use any of the following strategies to help confront and resolve these challenges:

- Seek consultation and supervision, including formal or informal peer supervision, as well as from support groups and consultation networks.
- Recognize that your needs are as important as those of the client. If you don't take care of yourself, you won't be able to work effectively with your clients.
- Network with other providers for support, resource sharing, and different perspectives.
- Continually clarify your role and its limitations with clients and other service providers.
- Find constructive ways to express and manage your own grief.

Case managers should note that a more participatory management style that includes staff in decision making and provides more emotional support improves staff morale and retention in HIV work.

INTERACTIVE EXERCISES

Clarifying Roles and Coordinating Team Efforts

Note to Trainers: Use the following group of service providers for this small group exercise:

- Medical care providers.
- Case managers.
- Social workers.
- Lawyers.
- Mental health services providers.

You can modify the list depending on your audience. You may assign participants to groups based on their job and have each group prepare its own list of service providers; or you may use multidisciplinary groups, assigning all or one of the listed professions to each group.

If you prefer a more interactive approach, you may post the list of disciplines on newsprint posted around the meeting room. Participants should then move to the area that best represents their expertise. Once each group has formed, they can proceed with the exercise.

Post the following questions on newsprint and ask each group to address each questions. Each group should choose a reporter and recorder.

- What might each of the provider groups do to increase client readiness for permanency planning?
- What are some barriers to these groups working together?

After each small group has presented its report, ask for suggestions on how the different disciplines can best coordinate their efforts. Chart suggestions on newsprint and post.

Note to Trainers: If time permits, you also should discuss what could happen if the various providers do not coordinate their efforts or share information appropriately.

Individual Issues

Note to Trainers: Conduct these activities before going over the “Individual Issues” content points. If participants offer content points during the activity, you may omit them or use them as a supplemental handout. You also may prefer to use them to briefly summarize the topic after the exercise.

Option 1

1. Divide participants into small groups. Have each group brainstorm a list of responses to the question, "What makes it difficult to raise and discuss permanency planning with HIV clients?" You can also post the question on newsprint.
2. Provide each group with a marker and newsprint to chart responses. Each group needs to choose a reporter and recorder. Have the groups post their newsprint when they report out.
3. Look for trends and facilitate discussion on the issues raised.
4. If you have time, you can consolidate the issues into categories and ask participants to go back to their small groups.
5. Assign each group a category, provide them more newsprint, and have the groups list behaviors that could express the items listed in their category. How might they recognize these feelings in their coworkers?

For example, in the category, "Own Mortality Issues," some responses might include:

1. "Thinking about death and dying is difficult for me."
2. "I just lost a relative last year and can't deal with another loss."
3. "It's too painful to think about."

As a result, several behaviors are likely, including:

- Failing to raise the issue with the client.
 - If client raises the issue, minimize its importance.
 - Referring the client to someone else to talk about it.
 - Providing the client with reading materials, and requesting that they return at some future time.
6. Have each group report to other participants; each group should post its list. It also may be helpful to review these behaviors and ask participants to decide which behaviors demonstrate responsible ways of managing these feelings and which could prevent the social worker/case manager from working effectively with clients.

Note to Trainers: Make sure to reinforce that while the feelings described in the first part of the exercise are common and understandable, the social worker/case manager is responsible for effectively managing those feelings.

Option 2

1. If you are pressed for time, you may review the content points under "Individual Challenges" but omit the "Listed Behaviors" component of the exercise.
2. Divide participants into small groups. Depending on the size of the group, assign each group one or more of the topics listed in that section.
3. Provide each group with a marker and newsprint. Ask each group to create a list of behaviors that stem from their topic.
4. Have each group post its list as it reports to the rest of the participants. Note any trends and facilitate discussion by asking, "How might these behaviors influence our relationship with our clients and our ability to work effectively with them?"

Individual Strategies

Conduct this activity before or in place of the “Individual Strategies” section. You may use the content points to summarize this section after the activity or as a supplemental handout.

1. In small groups, ask participants to develop a list of strategies they can use to overcome individual challenges in working with HIV clients on permanency planning.
2. Have each group report out. You can either list their responses or ask them to post their own responses and refer to this list when they report out.
3. Facilitate a large group discussion about how participants can implement these strategies or encourage their peers to implement them. Chart their suggestions on newsprint. Ask for suggestions from those who currently seem to be managing these issues well.

Action Planning

Before concluding this module, ask participants to take 10 minutes to respond individually to the question:

“After this training, what will I do differently in working with HIV positive parents?”

An alternate question would be:

“What will I start doing, continue doing, or stop doing as a result of this training?”

Note to Trainers: You can ask participants to share some of their responses before closing the training session.

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