

Federal Child Welfare Legislative Update

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Association of Administrators of the Interstate Compact
on the Placement of Children

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Laws We Will Discuss

- o Safe and Timely Interstate Placement of Foster Children Act of 2006 (Public Law 109-239)
- o Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248)
- o Fostering Connections To Success and Increasing Adoptions Act of 2008 (Public Law 110-351)

Safe and Timely: Overview

- o Requires States to establish procedures for the orderly and timely interstate placement of children and timeframes for completing interstate home study requests.
- o Provides authority for HHS to award fiscal incentives to States that complete timely interstate home studies.
- o Additional provisions for the State to consider interstate placements in making permanency decisions and amendments that strengthen the case review system.

Safe and Timely: Home Study Requirements

- As a title IV-E State plan requirement, States are to have procedures for orderly and timely interstate placement of children. Procedures consistent with an interstate compact along with meeting statutory home study provisions, will satisfy the requirement.
- States are required to conduct and complete a study of a home environment for the purposes of assessing the safety and suitability of placing a child in the home.
- The State that receives a request must conduct the study, itself or by contract with a private agency, and return the results in 60 days, or in limited circumstances until 9/30/08, in 75 days.

Safe and Timely: Home Study Requirements

- The State that requested the home study must accept the completed home study unless, within 14 days of receiving the report, the State determines that reliance on the report would be contrary to the child's welfare.
- Neither foster/adoptive parent education & training nor criminal and registry background checks need be completed within the timeframes for the State to meet the home study requirement.

Safe and Timely: Home Study Incentives

- Congress authorized \$10m for FY 2007 through 2010, but there are no funds available for this purpose in FY 2008. The Administration has not requested funds for this purpose in FY 2009.
- If appropriations are made available in the future, States that provide HHS with data reports on the interstate home studies will be eligible for \$1,500 for each timely interstate home study completed within the 30-day timeframe.
- If States receive these awards, the funds can be spent on any activity permitted under the title IV-B/IV-E programs during a 2-year expenditure period.

Safe and Timely: Interstate Considerations

- o The law modifies an existing title IV-B State plan requirement to require States to "make" effective use of cross jurisdictional resources and "eliminate legal barriers" to timely adoption
- o The law modifies several existing State plan requirements to require States to consider in and out-of-State placements in permanency planning decisions, permanency hearings, and concurrent planning
- o The law increases the frequency of required caseworker visits from every 12 months to every 6 months for children in out-of-State foster care placements, and allows for a private agency under contract with either State to perform those visits.
- o Amends the original court improvement program to require court grantees to assess their effectiveness in expediting interstate placements

Safe and Timely: Case Review System Modifications

- o Require the case plans to include the most recent information available regarding the health and education records of the child (rather than the existing requirement to include such information to the extent available)
- o Supply a copy of the child's health and education record to the foster parent or foster care provider at the time of placement and to provide it at no cost to the child at the time the child is emancipated from foster care
- o Provide foster caregivers the "right" to be heard in "any proceeding," in lieu of the existing requirement for an opportunity to be heard in any review or hearing

Adam Walsh: Overview

- o Amends the Title IV-E background check requirements for prospective foster and adoptive parents;
- o Requires HHS to establish a national registry of substantiated cases of child abuse and neglect and conduct a feasibility study on such a registry;
- o Makes information in the National Crime Information Databases (NCID) available to government agencies when investigating child abuse or neglect and
- o Requires the Attorney General (DOJ/FBI) to conduct fingerprint-based checks of the NCID for child welfare agencies when those agencies are conducting foster/adoptive parent background checks

**Adam Walsh:
Criminal Records Checks (CRCs)**

- o Agency must conduct CRCs on any prospective foster or adoptive parent before the prospective parent may be licensed as a placement for a child who receives title IV-B/IV-E.
- o CRCs must be fingerprint-based checks of the National Crime Information Databases (NCID)
- o Requirement applies to title IV-E agencies and entities with which they contract (i.e., child placing agency or a licensing entity)

Adam Walsh: CRCs

- o Delineates the criminal convictions that categorically exclude an individual from serving as a foster or adoptive parent:
 - o Felony conviction for child abuse or neglect; spousal abuse or a crime against children, including child pornography
 - o Crimes involving violence, (e.g., rape, sexual assault, homicide)
 - o Within the past five years: physical assault, battery, drug-related offense
- o The CRC requirement is both a State plan requirement and an eligibility requirement for children

**Adam Walsh:
Child Abuse and Neglect (CAN) Registries**

- o Requires States to check any State-maintained CAN registry in each State in which the prospective parents and any other adults living in the home have resided within the preceding five years.
- o The CAN Registry check must be completed prior to the State licensing/approving the home.

Adam Walsh: CAN Registry

Requirement applies to prospective parents who:

- will be licensed or approved by the State agency (this includes an agency that has a title IV-E agreement with the IV-E agency, or an entity that is contracted to license prospective parents)

AND

- who will care for a child participating in the State's title IV-B/IV-E programs

Adam Walsh: CAN Registry

An agency:

- must comply with incoming requests for information on a household member of a prospective foster/adoptive if the State maintains a CAN registry
- that does not maintain a CAN registry itself is not required to provide information.

Adam Walsh: CAN Registry

- A State that believes that another State maintains a CAN registry but is not responding appropriately to an information request should contact its ACF Regional Office.
- ACF has authority to conduct a partial review pursuant to 45 C.F.R. 1355.32(d) to examine issues of State plan compliance.

Adam Walsh: National Registry

- In consultation with DOJ, HHS is required to create an electronic national registry of perpetrators of substantiated cases of CAN, and the nature of those cases
- HHS has started the process of conducting a feasibility study
- The law authorized, but did not appropriate, funds for FYs 2006 and 2007 for HHS to conduct a feasibility study to address the issues related to creating a national registry.

Adam Walsh: Confidentiality

- States must establish safeguards to prevent unauthorized disclosure of registry information obtained on prospective parents.
- States must have procedures that prohibit sharing foster/adoptive parent's information obtained from the registry for purposes other than background checks.

Adam Walsh: CRCs and Monitoring

- Child and Family Services Reviews (CFSRs) Reviews/Oversight:
 - No immediate changes to the CFSRs as the changes to monitor for the new laws in the CFS review require regulations.
 - Nonetheless, ACF has partial review authority if we are advised that a State may be operating out of compliance with the law.
- Title IV-E Eligibility Reviews:
 - The agency must provide evidence that it made a determination that the results of each prospective foster parent's background check comply with the Federal requirements. Documentation must be provided even when the child is placed with a prospective foster parent who lives out-of-State.

Fostering Connections: Overview

- Creates a State and Tribal option to provide kinship guardianship assistance payments (GAP)
- Creates direct title IV-E funding to Tribes
- De-links Adoption Assistance from AFDC
- Provides an option for States to extend title IV-E payments to age 21
- Creates Family Connections Grants, including grants for kinship navigator programs

GAP: Child Eligibility

- Child must have been eligible for title IV-E foster care maintenance payments while residing for at least 6 consecutive months in the home of the prospective relative guardian.
- During the 6 months that the child was living with the prospective relative guardian, the prospective relative guardian must have been fully licensed as a foster family home.
- The child need not have received title IV-E foster care maintenance payments in order to be eligible for the Guardianship Assistance Program (GAP)

GAP: Permanency and Attachment

- Reunification with parents and/or adoption cannot be a permanency option for the child
- The child must demonstrate a strong attachment to the prospective relative guardian
- The prospective relative guardian must have a strong commitment to caring permanently for the child

GAP: Agreements

The GAP Agreement must:

- be negotiated between the agency and the prospective relative guardian
- be written and binding and
- specify the amount and manner of the payment and the manner in which the payment may be adjusted

GAP Agreements, continued

The GAP agreement must:

- specify the services and assistance for which the child and guardian are eligible pursuant to the agreement
- specify that it is in effect irrespective of the State in which the relative guardian resides. The State that executes the agreement remains responsible for the payment
- be provided to the relative guardian

GAP: Treatment of Siblings

- The agency may make GAP payments on behalf of the ineligible sibling(s) of an eligible child who enters the GAP.
- The ineligible sibling(s) must be placed in the same guardianship arrangement.
- The agency and the relative guardian must agree that the placement is appropriate for the sibling(s).

GAP: Payments

- GAP payments may not exceed the amount that the child would have received had the child been in a foster family home.

GAP: Other Provisions

- Extends categorical eligibility for Medicaid to children receiving GAP payments.
- Permits States to claim title IV-E for continued assistance or services for children who were receiving assistances or services under a title IV-E guardianship demonstration project as of September 30, 2008, if that demonstration project is terminated.

GAP: Other Provisions

- The agency must pay the total costs of expenses associated with obtaining legal guardianship of the child, not to exceed \$2,000.
- A youth who is 14 or older must be consulted about the guardianship arrangement.
- Tribes that receive direct title IV-E funding may opt into the GAP

CFCIP and ETV

- o Amends the Chafee Foster Care Independence Program (CFCIP) to add the purpose of providing services to youth who after age 16 leave foster care for kinship guardianship or adoption.
- o Amends the Education and Training Voucher (ETV) Program to permit vouchers for youth who after attaining age 16 enter into kinship guardianship or are adopted from foster care.

Title IV-E and Case Plan Requirements

- o Modifies a title IV-E plan requirement to require procedures for fingerprint-based criminal records checks of relative guardians and child abuse and neglect registry checks of relative guardians and all household adults before a relative guardian may receive kinship guardianship assistance payments on behalf of a child.
- o Amends the case plan provisions to require descriptions about the appropriateness of guardianship as a permanent plan, among other items, for a child whose plan is to receive kinship guardianship assistance.
- o Effective date: Upon enactment (October 7, 2008).

Family Connection Grants

- o Authorizes the Secretary to award competitive, matching grants to State, local, or Indian Tribal child welfare agencies, and private non-profit organizations for the purpose of helping children who are in or are at-risk of entering into foster care reconnect with family members through:
 - o (1) kinship navigator programs;
 - o (2) efforts to find biological family and reestablish relationships;
 - o (3) family decision making meetings; or,
 - o (4) residential family treatment programs.
- o Effective Date: Upon enactment (October 7, 2008).

Option to Extend Eligibility for Title IV-E
Payments to Age 21

- o Allows States and Tribes to elect to provide title IV-E foster care, adoption assistance and kinship guardianship payments to youth up to age 19, 20 or 21, when those youth meet certain education, training or work requirements, or is incapable of these activities due to a medical condition.
- o Effective Date: October 1, 2010

Option to Extend Eligibility for Title IV-E
Payments to Age 21

- o The conditions for continued title IV-E payments apply to youth over age 18 and require the youth to be:
 - o completing secondary school (or equivalent), enrolled in post-secondary or vocational school; or
 - o participating in a program or activity that promotes or removes barriers to employment;
 - o employed 80 hours a month; or
 - o incapable of any of these due to a documented medical condition.

Option to Extend Title IV-E Foster Care,
Adoption & Guardianship to Age 21

- o Amends the existing definition of a child care institution to include a supervised setting in which an individual who has attained 18 years of age is living independently, consistent with conditions the HHS Secretary establishes in regulations.
- o Effective Date: October 1, 2010

Fostering Connections: Short-Term Training

- o Permits title IV-E agencies to claim the costs of short-term training of:
 - o relative guardians
 - o private child welfare agency staff providing services to children receiving title IV-E assistance
 - o child abuse and neglect court personnel
 - o agency, child or parent attorneys
 - o guardians *ad litem*
 - o court appointed special advocates

Reauthorization of Adoption Incentives Program

- o Extends the Adoption Incentive Program through FY 2013 and update the “base year” used to measure increases to FY 2007
- o Doubles incentive payment amounts for special needs (from \$2,000 to \$4,000) and older child adoptions (from \$4,000 to \$8,000)
- o Creates a “highest ever” foster child adoption rate payment for exceeding the highest foster child adoption rate since 2002.
- o Effective date: Upon enactment (October 7, 2008).

Fostering Connections: Adoption Assistance Program

De-links a child’s eligibility from the AFDC requirements and changes other program requirements, with most changes taking effect beginning in FY2010

Fostering Connections: Revised Adoption Assistance Eligibility Criteria

- o Beginning in FY 2010, a child with special needs who is an applicable child is eligible under the revised eligibility criteria if the child:
 - o at the time of the initiation of adoption proceedings the child was in the care of a public or private child placement agency by way of a voluntary placement, voluntary relinquishment or a court-ordered removal with a judicial determination that remaining at home would be contrary to the child's welfare; or
 - o meets the disability or medical requirements of the Supplemental Security Income (SSI) program;

Fostering Connections: Revised Adoption Assistance Eligibility Criteria, continued

- o was residing with a minor parent in foster care (who was placed in foster care by way of a voluntary placement, voluntary relinquishment or court-ordered removal); or
- o was eligible for adoption assistance in a previous adoption in which the adoptive parents have died or had their parental rights terminated.

Adoption Assistance: Applicable Child

- o The revised adoption assistance eligibility criteria are phased-in from FY 2010 to FY 2018 based on whether the child is defined as "an applicable child," which primarily relates to the age of the child in the year the agreement is entered into.
- o The revised program rules apply for children who:
 - o turn 16 or older in FY 2010 and for whom an adoption assistance agreement is entered into that same year; then each subsequent year the age to apply the revised program rules decreases by two years (e.g., children who turn 14 or older in FY 2011 and children who turn 12 or older in FY 2012) until children of any age are eligible according to the new eligibility criteria in FY 2018.
 - o Beginning in 2010, to a child who has been in foster care for 60 consecutive months (5 years) or is a sibling to a child who is eligible due to his age or length in foster care.

Revised Adoption Assistance Program Requirements

- A State is required to spend an amount equal to any savings in State expenditures under title IV-E as a result of applying the new program rules to applicable children for a fiscal year for services permitted under title IV-B or IV-E
- Children who have special needs but who are not citizens or residents of the U.S. and were either adopted in another country or brought to this country for the purposes of adoption are categorically ineligible for adoption assistance, except if the child meets the eligibility criteria after the disruption of the international adoption
- Effective date: Upon enactment (October 7, 2008), subject to the phase-in for certain provisions.

Fostering Connections: Direct Title IV-E Funding to Indian Tribes

- Allows Federally recognized Indian Tribes, Indian Tribal organizations and Tribal consortia to apply to receive title IV-E funds directly for foster care, adoption assistance and, at Tribal option, kinship guardianship assistance
- All title IV-E requirements apply equally to Tribes and States, except as otherwise described in the law.
- Creates some definitions and plan requirements specific to programs operated by Tribes.

Tribal Title IV-E Plan

- A Tribal title IV-E plan must demonstrate that the Tribe has not had any uncorrected significant or material audit exceptions under Federal grants or contracts relating to the administration of social services for 3 years prior to the date of plan submission
- A Tribe must designate a title IV-E agency that must submit a plan to the ACF Regional Program Manager.

Tribal Title IV-E Plan

- The plan must reference and provide supporting documentation of the law or codes, regulation or policy in effect that complies with each of the title IV-E plan requirements.
- ACF approval of the title IV-E plan is necessary for a title IV-E agency to claim Federal reimbursement for allowable title IV-E expenditures.
- A Tribal title IV-E plan must also describe the Tribe's title IV-E service area and population

Tribal Title IV-E Requirements

- For the first 12 months that a Tribe's plan is in effect, the Tribe may use *nunc pro tunc* orders and affidavits to verify reasonable efforts and contrary to the welfare determinations for title IV-E foster care eligibility
- For the purposes of determining AFDC eligibility for title IV-E foster care, Tribes must use the title IV-A State plan (as in effect as of July 16, 1996) of the State in which the child resided at the time of removal

Tribal In-Kind Funds

- Allows Tribes receiving title IV-E to use in-kind funds from third-party sources as match for administrative and training costs
- Places limits on the amount of in-kind expenditures and types of third-party sources
- Authorizes the Secretary to set future limits in regulation (section 479B(c)(1)(D)).

Tribal FMAP

- Outlines the formulation of a Tribal Federal Medical Assistance Percentage (FMAP) to be used for direct title IV-E funding to Tribes which takes into consideration the Tribe's service area and population.
- Requires the application of the Tribal FMAP, if higher than the State FMAP, for certain payments under title IV-E agreements and contracts between States and Tribes.

Tribal CFCIP

- Creates an option for Tribes with an approved title IV-E plan or a Tribal/State agreement to directly receive a portion of the State's Chafee Foster Care Independence Program (CFCIP) allotment to provide services for Tribal youth
- Adds a new title IV-E plan requirement and a new CFCIP plan requirement for a State to negotiate in good faith with Tribes on title IV-E or CFCIP agreements as described in the law.

Tribal Technical Assistance and Grants to Support Title IV-E Plan Development

- Requires HHS to provide technical assistance and implementation services to Tribes seeking to operate title IV-B and IV-E programs or enter into cooperative agreements with States.
- HHS is authorized to make one-time grants of up to \$300,000 to Tribes that apply for funding to assist in developing a title IV-E plan to implement a title IV-E program directly.
- \$3 million is directly appropriated by the law for FY 2009 and each fiscal year thereafter for the technical assistance and grants.
- Effective date: Upon enactment (October 7, 2008).

Fostering Connections:
Additional Title IV-E Plan Requirements

- o The law also adds the following title IV-E plan requirements:
 - o Title IV-E plan requirement for notice to relatives of removal
 - o Title IV-E plan requirement for school attendance assurance
 - o Title IV-E plan requirements for sibling placement
 - o Title IV-E plan requirement to inform parents of adoption tax credit
 - o Title IV-E plan permits licensing waivers for relatives and Report to Congress

Fostering Connections:
Additional Title IV-E Provisions

- o The law also contains the following provisions:
 - o Educational stability case plan requirement
 - o Travel to school added to foster care maintenance payment definition
 - o Title IV-B plan health oversight and coordination plan requirements
 - o Transition plan for emancipating youth
 - o State good faith negotiation with Tribes seeking to develop an agreement with the State to administer title IV-E plan
