



NATIONAL CONFERENCE *of* STATE LEGISLATURES

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Fostering Connections to Success and Increasing Adoptions Act of 2008

H.R. 6893 / P.L. 110-351

Background: H.R. 6893 was introduced by Representative Jim McDermott of Washington on September 15, 2008 and was immediately referred to House Committee on Ways and Means. On September 17, 2008, H.R. 6893 was passed the House by 2/3 voice vote on the suspension calendar. On October 7th, 2008, the bill received the President's signature and became Public Law No: 110-351. This bill resolves differences between the House-passed Fostering Connections to Success Act (H.R. 6307) and the Senate Finance Committee-approved Chairman's Mark of S. 3038, the Improved Adoption Incentives and Relative Guardianship Support Act. The bill is designed to connect and support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access, and improve incentives for adoption. H.R. 6893 reauthorizes several programs that expire October 2008. On September 22, 2008, it was passed by unanimous consent in the Senate. H.R. 6893 received bipartisan support and is fully offset by granting the Treasury Department authority to invest excess operating cash in repurchase agreements. The offset also clarifies the definition of a child for tax purposes. H.R. 6893 will provide state options for subsidized guardianship payments for relatives, incentives for adoption, adoption assistance, kinship navigator programs, new family connection grants, and federal support for youth to age 21. H.R. 6893 amends parts B and E of title IV of the Social Security Act.

Please note that different sections have different implementation dates.

Kinship Guardianship Assistance Payments for Children

States have the option to provide kinship guardianship assistance payments on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children and states will be able to use federal title IVE funds for this purpose. In order to receive payments, a state must negotiate and enter into a written binding kinship guardianship assistance agreement with the prospective relative guardian. The agreement must include:

- The amount of and manner of payment,
- Additional services and assistance that the child and relative guardian may be eligible for under the agreement,
- Procedure by which the relative guardian may apply for additional services, and
- Assurance that the state will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child (not to exceed \$2,000).

This agreement will remain in effect without regard to the state residency of the guardian. A kinship guardianship assistance payment shall not exceed the foster care maintenance payment which would have been paid on behalf of a child in a foster care home. The child is eligible for this payment if:

- The child has been removed from his or her home voluntarily or as a result of a judicial determination,

- The child is eligible for foster care maintenance payments while living for six consecutive months in the home of the relative guardian,
- Being returned home or adopted are not appropriate permanency options for the child,
- The child demonstrates strong attachment to the relative guardian and the relative guardian has a strong commitment to caring permanently for the child, and
- If the child is over 14 years of age the child must be consulted regarding the placement.

Any sibling may be placed in the same kinship guardianship arrangement if agreed upon by the guardian and the state. The kinship guardian may also receive payments on behalf of the sibling. The state must provide procedures for criminal records checks (including fingerprint-based checks of national crime databases) on any relative guardian. The state must also perform the same previously required checks on the relative guardian and any other adult living in the home before the relative guardian may receive kinship guardianship assistance payments. If a child's permanency plan is placement with a relative and receipt of kinship guardianship assistance payments, then the description submitted should include:

- The steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted,
- The reasons for any separation of siblings during placement,
- The reasons why a permanent placement with the relative is in the child's best interests,
- The ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment,
- The efforts that the agency has made to discussion adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and documentation of the reasons, and
- The efforts made by the state agency to discuss with the child's parent the kinship guardianship assistance arrangement or the reasons why the efforts were not made.

Those states that have current waivers to provide kinship care will be able to claim IVE funds for children who are receiving such supports as of September 30th, 2008 regardless of whether or not they would be eligible under the new program. After the termination of a state demonstration project related to guardianship, the expenditures of the state to children under the project are deemed to be expenditures under the state plan. Children who exit foster care for relative guardianship or adoption after the age of 16 are eligible for independent living services and education and training vouchers. Children receiving kinship guardianship assistance payments are eligible for Medicaid.

Family Connection Grants

The Secretary of Health and Human Services may make matching grants to state, local, or tribal child welfare agencies, and private non-profit organizations that have experience working with foster children in kinship care arrangements. These grants will be used for helping children who are in, or at risk of entering, foster care reconnect with family members. These grants shall establish:

- A kinship navigator program that:
 - Is coordinated with state or local agencies and planned and operated in consultation with kinship caregivers (and organizations representing them), youth raised by kinship caregivers, relevant government agencies, and relevant community based or faith based organizations,
 - Establishes toll-free information and referral systems that link kinship caregivers, kinship support group facilitators and kinship service providers to eligibility and enrollment information, relevant training, relevant legal assistance, and each other,
 - Provides outreach to kinship care families including a website, guides or materials
 - Promotes partnerships between public and private agencies including schools, community based or faith based organizations, and relevant government agencies,

- May establish a kinship care ombudsman with authority to intervene and help kinship caregivers access services, and
- May support any other activities designed to assist kinship caregivers in obtaining benefits and services.
- Intensive family-finding efforts that utilize search technology to find biological family members for children in the child welfare system and works to reestablish relationships and explore ways to find permanent family placement for the children.
- Family group decision-making meetings for children in the child welfare system that:
 - Enable families to make decisions and develop plans that nurture children,
 - When appropriate shall address domestic violence issues, or
 - Residential family treatment programs that enable parents and their children to live in a safe environment for six months and provide substance abuse treatment services, children's early intervention services, family counseling, medical, and mental health services, nursery and pre-school, and other services designed to provide comprehensive treatment.

To receive a matching grant, an entity must submit an application to the Secretary. The application must include:

- A description of how the grant will be used to implement one of the above programs
- A description of the types of children and families to be served, recruited, and an initial projection of the number of children and families to be served
- An assurance that the entity will cooperate fully with any evaluation provided for by the Secretary

If the entity is a private organization, the application must include documentation of support from the relevant local or state child welfare agency and a description of how the organization plans to coordinate with the local or state child welfare agency.

The Secretary may award a grant for no less than one year and no more than three years. The Secretary may not award a grant to more than 30 new grantees each fiscal year. The grant payment each year shall be a percentage of the total expenditures proposed in the application. If the application is approved, the grantee shall receive:

- 75% of the total expenditures for the 1st or 2nd year of the grant period
- 50% of the total expenditures for the 3rd year of the grant period

A grantee may provide not more than 50% of the total expenditures for the project, including plant, equipment, or services. A grantee must use the grant in accordance with the approved application. The Secretary shall reserve \$5 million for the kinship navigator programs and 3% of the funds for an evaluation of the activities funded by these grants. The Secretary must also reserve 2% of the funds for technical assistance to grant recipients. \$15 million is appropriated for these grants for each fiscal year from 2009 to 2013.

Notification of Relatives

Within 30 days after the child has been removed from parental custody, the state shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child. The notice will be sent to any other adult relatives suggested by the parents, subject to exceptions due to domestic violence. The notice must:

- specify that the child has been removed from the custody of the parent,
- explain the options the relative has under federal, state, and local law to participate in the care and placement of the child,
- explain the options that may be lost by failing to respond to the notice,
- describe the requirements to become a foster family home,
- describe the services and supports that are available for children in a foster home, and

- describe how the relative guardians of the child may receive kinship guardianship assistance payments, if the state has elected to offer such payments.

Licensing Standards for Relatives

Allows for a waiver of licensing standards may be made on a case-by-case basis for relative foster family homes. This waiver can be allowed for specific children in foster care for non-safety standards, as determined by the state. The Secretary must submit to the Congress a report within two years of the date of enactment. This report must include:

- Nationally and state by state totals and percentages of children in foster care placed in licensed relative foster family homes and children placed in unlicensed relative foster family homes
- The frequency with which state grant case-by-case waivers of licensing standards
- The types of non-safety licensing standards waived
- An assessment of how such waivers have affected children
- A review of any reasons why relative foster family homes may not be able to be licensed
- Recommendations for administrative or legislative actions that may increased the percentage of relative foster family homes that are licensed

State Option for Foster Children After Age 18

The state has the option to extend foster care and adoption assistance programs to any child up to age 21 if the individual is:

- completing secondary education or equivalent credential,
- enrolled in an institution which provides post-secondary or vocational education,
- participating in a program to promote or remove barriers to employment,
- employed for at least 80 hours per month, or
- incapable of doing these activities due to a medical condition.

The definition of a “special needs” child is expanded to include children over the age 18 in a supervised setting in accordance with regulations to be established by the Secretary. The adoption assistance and guardianship payments can be continued to 19, 20, or 21 if the youth is 16 or older when adoption assistance or guardianship payments took effect. A payment may not be made to parents or relative guardians of a child who:

- has attained 18 years of age (unless the state elects otherwise)
- 21 years of age if the state determines that the child has a mental or physical handicap
- who has not attained 18 years of age if the state determines that the parents or relative guardians are no longer legally responsible for the support of the child
- or if the state determines that the child is no longer receiving support

Parents or relative guardians who have been receiving adoption assistance payments or kinship guardianship assistance payments must keep the state or local agency administering the program informed of circumstances which would make them ineligible for payments. These changes shall go into effect October 1, 2010.

Transition for Children Aging Out of Foster Care

During the three month period immediate prior to the child turning 18 (or greater as the State may elect) a caseworker must provide the child with assistance and support in developing a transition plan.

Training to Child Welfare Agencies, Guardians, and Court Personnel

Each state, which has a plan approved, is entitled to a payment of 75% of expenditures (including travel and per diem expenses) for the short-term training of current or prospective foster or adoptive parents. Relative guardians, court personnel and child welfare agency staff are added to this provision as well. This

will be phased into effect beginning at 55% of expenditures in FY 2009, 60% of expenditures in FY 2010, 65% to expenditures in FY 2011, and 70% of expenditures in FY 2012, reaching at the 75% level for FY 2013 onward.

Educational Stability

Each child's state case plan must include:

- assurances that the placement of the child in foster care takes into account the current educational setting and proximity to the school,
- an assurance that the state agency has coordinated with local educational agencies to ensure the child remains in school,
- if remaining in such school is not in the best interests of the child, assurances by the state and local agencies to provide immediate enrollment and transfer of records to a new school, and
- and consider reasonable travel for the child to remain in his or her current school.

Health Oversight and Coordination Plan

The state will develop a plan, in consultation with pediatricians and other experts, a plan for the oversight and coordination of health care services for foster care youth. The plan must also include consideration of mental health and dental health needs. The plan shall include an outline of:

- a schedule for initial and follow-up health screenings
- how health needs identified through screenings will be treated
- how medical information for children will be updated and shared (may include electronic records)
- steps to ensure continuity of health care
- the oversight of prescription medication
- how the state consults with physicians and other professionals in assessing the health and well-being of children in foster care

This plan will not reduce or limit the responsibility of the state agency responsible for the child's care.

Sibling Placement

For all placements, the state must make a "reasonable effort" to place siblings in the same foster care, kinship guardianship, or adoptive placement. If the siblings are removed from their home and not jointly placed, the state must make a "reasonable effort" for frequent visitation or other ongoing interaction between the siblings. The state does not have to make a "reasonable effort" if the state documents that such a joint placement or continued interaction would be contrary to the safety or well-being of any of the siblings.

Tribal Foster Care and Adoption

This language seeks to assure that there is equitable access for foster care and adoption services for Indian children in tribal areas. All Indian tribes are allowed direct access to IV-E funds which includes services to support foster care, adoption, and independent living. The legislation contains provisions that would provide new funding for technical assistance to tribes who seek to operate the Title IV-E program and one-time start up grants of up to \$300,000 each year for a maximum of two years. Tribes are made eligible to receive a direct allocation from the federal government from the John H. Chafee Independence Program which would be calculated based upon the percentage of children in the state that are under a tribe's custody and would be a deduction from the state's allocation.

Adoption Incentives Program

The Adoption Incentives Program is extended through 2013. FY 2007 becomes the new baseline for determining incentive payments and base numbers of adoptions. Incentive payments for special needs adoptions and older child adoptions are increased. A state now receives \$4,000 per adoption that exceeds the highest number of adoptions plus \$4,000 per special needs non-older child adoption, or \$8,000 per older child adoption. States have 24 months to spend the adoption incentives funds (instead of two-years). The state may receive additional payment if the state's adoption rate exceeds the highest ever previously recorded rate for a year (beginning in 2002). The award would be \$1,000 times the number of adoptions that occurred as a result of the state exceeding its highest ever foster child adoption rate; this rate assumes that the foster care caseload remains constant.

Promotion of Adoption of Special Needs Children

The eligibility for adoption assistance is no longer linked with the income requirements of AFDC and SSI. The language requires that any money saved because of the eligibility changed must be reinvested in services. This part creates a series of changes to be gradually introduced into practice for "applicable" children. An applicable child:

- Was in the care of a public or licensed child placement agency at the time of adoption proceedings,
- Meets all medical or disability requirements with respect to eligibility for supplemental security income benefits,
- Was residing in a foster family home or child care institution, and
- Has been determined by the state to be a child with "special needs."

The changes are phased in over 9 years so the first "applicable" children become eligible for adoption assistance in 2010 if they are age 16 or older and have been in care for 60 consecutive months. A child is also eligible if he or she is a member of a sibling group in which one of the siblings meets the above requirements. In 2011, children age 14 or older become eligible. In 2012, children age 12 become eligible. By 2018, any age child that meets the other requirements is eligible. Other changes to adoption assistance eligibility include:

- Any child who is eligible for SSI will be deemed to be a child with special needs
- Children in private child welfare agencies, public state and local agencies, and Indian tribal organizations, will be eligible
- If a guardian decides to adopt later, the child continues eligibility for adoption assistance as if placement and kinship guardianship assistance payments had never been made.

A child shall not receive payments if:

- The child is not a citizen or resident of the United States
- The child was adopted outside of the United States
- The child was brought into the United States for the purposes of adoption

Information on Adoption Tax Credit

The state must inform any individual who is adopting that they may be potentially eligible for a Federal tax credit.

Offsets

Clarification of the Definition of "Qualifying Child"

The definition of "qualifying child" for tax credits now stipulates:

- The child must be younger than the individual claiming him or her
 - Or the child must be permanently and totally disabled
- The child cannot be married

- A child can only be claimed by a parent
 - If no parent claims the child, another eligible taxpayer may if he or she has a higher adjusted gross income for the taxable year than any other eligible parent for that child

This applies to the following tax credits:

- The dependency exemption
- The child credit
- The earned income credit
- The dependent care credit
- The head of household filing status

These changes shall apply all tax years beginning December 31, 2008.

Other provisions

The Secretary of Treasury is authorized to invest any part of the operating cash of the treasury in certain investments for 90 days. Federal funding is prohibited to be paid to individuals who are unlawfully present in the country.

Effective Date

The provisions in this act shall take effect on the date of enactment of this Act. A delay is permitted if state legislation is required by an approved plan. A state plan shall not be regarded as failing to comply if the delay is due to necessary state legislation, unless the delay extends beyond the close of the State legislature's first regular session following enactment of this Act.

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