



Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351)

Bipartisan Law Makes Most Important Child Welfare Improvements in a Decade

By Patrick Lester and Varina Winder ¹
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On October 7, 2008, former President George W. Bush signed the bipartisan Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) into law. It had previously passed unanimously in both the House and Senate. The new law represents the most significant child welfare legislation enacted in a decade. Its improvements are intended to improve outcomes for vulnerable children and their foster and adoptive families.

In crafting and passing the legislation, leaders from both sides of the aisle in both houses of Congress emphasized that while these reforms represented significant steps forward in the child welfare system, there is still much work to be done. Reforming the child welfare financing system was highlighted as a priority for Senate Finance Chairman Max Baucus (D-MT), and a second round of reforms may be considered in this session (111th) of Congress.

LEGISLATIVE SUMMARY

Section 1 – Short Title: The act may be cited as the “Fostering Connections to Success and Increasing Adoptions Act of 2008.”

TITLE I—CONNECTING AND SUPPORTING RELATIVE CAREGIVERS

Section 101 – Kinship Guardianship Assistance Payments for Children: This section allows states to use federal Title IV-E funds for kinship guardianship payments for children cared for by relative foster parents committed to caring for the child permanently. Such payments must not exceed the foster care maintenance payments that would have been made had the child remained in foster care. For guardians to be eligible for such payments, the child must reside for at least 6 consecutive months with the relative guardian, the state must determine that being returned home or adopted is not an appropriate permanency option for the child, and for children age 14 and older, the child must be consulted. The law also clarifies that children who leave foster care after age 16 for kinship guardianship are eligible for independent living services and education and training vouchers.

Analysis: All states will have the option to provide kinship guardianship assistance payments; however, it is not required. Currently, 37 states and the District of Columbia operate programs that offer subsidized-guardianship in some form, although the programs vary significantly from

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state to state.² However, all programs share the goal of promoting lasting family relationships between children in or at-risk of entering foster care and improving permanency options.

These provisions will facilitate the transfer of custody of up to 20,000 children now in state foster care to relatives willing to assume guardianship when the child's return home or adoption is not appropriate.³ Siblings may also be placed in the same home and receive support, even if such sibling would not have otherwise been eligible for payments, allowing siblings to remain together regardless of financial status.

Section 102 – “Stephanie Tubbs Jones Child Welfare Services Program” (Family Connection Grants): Named in honor of the late Representative Stephanie Tubbs Jones (D-OH), this section provides \$15 million per fiscal year between 2009 and 2013 for the Secretary of Health and Human Services to make matching grants to states, local agencies, tribal organizations, and private nonprofit organizations for activities designed to connect foster children to relatives. Allowable expenditures include: (1) kinship navigator programs to assist grandparents and other relatives learn about available programs and services to help raise children in their care; (2) family group decision making meetings for children in the child welfare system; (3) intensive family finding efforts of children in the system; and (4) residential family-based substance abuse treatment programs to enable parents and children to live in a safe, substance-free environment. Grants may be 1-3 years in length.

Analysis: These competitive grants will allow applicants, including state, local and tribal child welfare and nonprofit agencies with experience in serving children in foster care settings, to create and/or enhance programs connecting children in or at-risk of entering foster care with their families.

Section 103 – Notification of Relatives of Foster Care Placements: This section requires states, within 30 days of removing a child from his/her home, to exercise due diligence and notify all relatives of the child of the placement and explain the options the relative has to participate in the care and placement of the child.

Analysis: This section will allow relatives to become involved in the care of the removed child early on, strengthening ties and potentially limiting the child's number of moves.

Section 104 – Relative Licensing Standards: This section allows for a waiver of non-safety licensing standards in relative foster family homes on a case-by-case basis as determined by the state. Additionally, within two years of the law's enactment, the Secretary of Health and Human Services will submit to the relevant House and Senate committees a report with detailed information on the percentage of children in licensed relative foster family homes and the frequency of case-by-case waivers, as well as what types of waivers are granted and how they affect the children in care.

Analysis: Some of the standards that previously might have prevented licensure of a relative foster family home include requirements such as mandatory square footage and minimum numbers of bedrooms and bathrooms per person. While such standards are important, they should not necessarily limit two siblings, for example, from living in the same room. In requiring a detailed report from the Secretary of Health and Human Services, lawmakers will have a better understanding of the kinds of exceptions made for children living with relatives and whether they make a difference in kinship care arrangements.

² Center for Law and Social Policy & Children's Defense Fund. "New Help for Children Raised by Grandparents and Other Relatives: Questions and Answers about the Fostering Connections to Success and Increasing Adoptions Act of 2008." January, 2009. Available online at: http://www.alliance1.org/Public_Policy/welfare/raised_by_relatives.pdf

³ Children and Family Research Center, "Fostering Results: Family Ties: Supporting Permanence for Children in Safe and Stable Foster Care with Relatives and Other Caregivers," 2004, p. 2. Available online at: http://www.fosteringresults.org/results/reports/pewreports_10-13-04_alreadyhome.pdf.

TITLE II—IMPROVING OUTCOMES FOR CHILDREN IN FOSTER CARE

Section 201—Older Youth in Care: This section allows states, at their option, to provide Title IV-E funded foster care services for children until age 21 (i.e., through age 20), or a lesser age if the state so chooses (19 or 20). To be eligible, the child must either be: (1) completing a secondary education or a program leading to an equivalent credential; (2) enrolled in a post-secondary or vocational education program; (3) participating in a program designed to promote employment; (4) employed at least 80 hours per month; or (5) incapable of participating in such activities due to a medical condition. Protections and requirements currently in place for younger children would continue to apply to youth aged 18-21. Children that receive Title IV-E funded services are automatically eligible for Medicaid.

Analysis: This section seeks to improve outcomes for older youth, most of whom lose the only support system they know when they turn 18. In 2005, approximately 25,000 children aged out of the foster care system, or 67 every single day.⁴ In a study of children aging out of the foster care system, the Chapin Hall Center for Children at the University of Chicago found that fewer than half of the study's surveyed youth that were no longer in care at age 19 were employed, and of those who were employed, 90% earned less than \$10,000 per year.⁵ Almost half of the females reported having had at least one pregnancy by the age of 19, as compared to 20% of females in a nationally representative study.⁶ Males were more likely to have had run-ins with the law, and 28% of the sample reported having been arrested.⁷ One out of 7 (14%) reported experiencing homelessness since leaving care.⁸ Together with Section 202 (below), the law seeks to provide a longer period of support, as well as a smoother transition out of care.

Section 202—Transition Planning for Children Aging Out of Foster Care: This section requires caseworkers and other representatives of a child in care to work in conjunction with the child to develop a transition plan in the 90-day period before the child leaves the care of the state (at 18, 19, 20 or 21). The plan must be specific in describing housing, health insurance, education, support services and work force support options.

Section 203— Title IV-E Training Payments: This section extends Title IV-E training payments for personnel working for state-licensed or state-approved private child-serving agencies providing services to foster and adopted children. It also expands training payments to cover the cost of training current or prospective relative guardians (in addition to the foster or adoptive parents covered under current law). The match starts at 55 percent in FY 2009 and increases by 5 percent per year until reaching 75 percent in 2013.

Analysis: A well-trained and competent child welfare workforce is essential to ensuring positive outcomes for vulnerable children and families. Difficulties in recruitment, preparation and retention of these staff members have been the subject of numerous surveys and research reports and have been shown to contribute to a shortage of stable and competent child welfare workers. Staff turnover disrupts continuity of services, leaving newly assigned caseworkers to fill in holes left by insufficient information left in case files left behind and delaying action on child

⁴ Kids Are Waiting: Fix Foster Care Now and Jim Casey Opportunities Initiative, "Time for Reform: Aging Out and On Their Own." May 200. Available online at: <http://kidsarewaiting.org/reports/files/AgingOut.pdf>

⁵ Courtney, M. & Dworsky, A. "Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19: Executive Summary." Chapin Hall Center for Children at the University of Chicago, May 2005. Available online at: http://www.wispolitics.com/1006/Chapin_Hall_Executive_Summary.pdf

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

welfare cases⁹. Agency staff shortages result in rushed client visits and insufficient time to adequately assess children's safety and make informed decisions about placement options.¹⁰

While states were previously permitted to seek a federal reimbursement rate of 75 percent of the cost of providing training related to foster care and adoption assistance activities (allowable activities defined under Title IV-E of the Social Security Act) for public child welfare agency employees (or potential employees); training fund reimbursements could only be claimed for state-contracted private child welfare agency staff or legal representation of children at a match rate of 50 percent.¹¹ Currently, reimbursement rates for training for other private agency providers varies by state, although no state provides the same 75 percent match offered to public agencies.¹² By providing increased opportunities for reimbursement for private agencies, the new law helps to address longstanding workforce problems while simultaneously promoting the wellbeing of children in care.

Section 204—Promoting Educational Stability: The section requires case plans to include assurances that: (1) the placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity of the school in which the child is enrolled at the time of placement; and (2) the state agency has coordinated with the local educational agency to ensure that the child remains in the same school that he or she was enrolled at the time of placement. There is an exemption from this requirement in cases where remaining in the same school is not in the best interests of the child, in which case the state and local educational agency must provide immediate and appropriate enrollment in a new school, with all of the educational records transferred to the new school. This section also increases the amount of federal funding available for education-related transportation costs for children in care.¹³

Analysis: With foster children averaging one to two different placements per year of out-of-home care,¹⁴ and many children experiencing far higher numbers of moves, the school system can offer a measure of stability. According to the American Bar Association's Legal Center for Foster Care and Education, however, "educational outcomes for children and youth in foster care are dismal."¹⁵ On average, each change in school placement results in a six month loss of educational progress,¹⁶ and in one study, children and youth in care who attended public schools scored 16-20 percentile points lower than non-foster youth in statewide standardized tests across three different grade levels.¹⁷ This section seeks to reduce number of school changes a youth must undergo while in care and improve educational achievement levels.

⁹ Government Accountability Office, "HHS Could Play a Greater Role in Helping Child Welfare Agencies Recruit and Retain Staff." March 2003. Available online at: <http://www.gao.gov/new.items/d03357.pdf>

¹⁰ Ibid.

¹¹ Scarcella, C., Bess, R., Zielewski, E. & Geen, R., "The Cost of Protecting Vulnerable Children V: Understanding State Variation in Child Welfare Financing." The Urban Institute, May 2006. Available online at: http://www.urban.org/UploadedPDF/311314_vulnerable_children.pdf

¹² Alliance for Children and Families, "Human Services Workforce Improvement." 2004. Available online at: http://www.alliance1.org/Public_Policy/fact/Workforce_Concept2006.pdf

¹³ For more information about this provision, please visit:

http://www.abanet.org/child/education/qa_fostering_connections_final.pdf

¹⁴ National AFCARS data, 2002.

¹⁵ ABA Legal Center for Foster Care and Education, "Fact Sheet: Education Outcomes for Children and Youth in Foster and Out-of-Home Care." September, 2007. Available online at: http://www.abanet.org/child/education/National_EdFactSheet_2008.pdf

¹⁶ Center for Law and Social Policy & Children's Defense Fund, "Fostering Connections to Success and Increasing Adoptions Act Summary." 2008. Available online at: http://www.clasp.org/publications/FINAL_FCSIAA_LongSummary.pdf

¹⁷ Burley, M., & Halpern, M., "Educational Attainment of Foster Youth: Achievement and Graduation Outcomes for Children in State Care." Washington State Institute for Public Policy, Olympia, WA. 2001.

Section 205 – Health Oversight and Coordination Plan: This section requires states to develop a plan for the oversight and coordination of health care services for children in foster care, in conjunction with the state Medicaid agency and other experts. These plans must include a description of how initial and follow-up health screenings will be provided, how health needs identified through screenings will be monitored and treated, how medical information for children in care will be updated and appropriately shared, and how prescription medications will be overseen. The plan must also detail steps to be taken to ensure continuity of health care services (including the possibility of establishing medical homes). The section does not lessen the responsibilities of the state Medicaid agency to provide care and services for these children.

Analysis: More than 80 percent of children seen by child welfare agencies meet clinical criteria for behavioral problems or psychiatric diagnosis, as compared to approximately 20 percent of the general youth population.¹⁸ However, in addition to moving between home placements, children in care also move between health care providers. Pediatricians and other doctors may see a child without health records, accompanied by a foster parent or representative with limited or no knowledge of that child's medical history. This may lead to incompatible treatments, missed diagnoses, and duplicated medications.¹⁹ The new law will enhance the health care provided to children in care by ensuring necessary parties, including doctors and foster parents, have the information needed to adequately assess the child's health needs.

Section 205 – Sibling Placement: This section requires states to make reasonable efforts to place siblings in the same foster care placement unless such placements would be contrary to the safety or well-being of any of the siblings. Should siblings not be placed together, reasonable efforts must be made to ensure ongoing interaction between siblings, unless doing so is contrary to the safety and/or wellbeing of any sibling.

Analysis: Although more than 70 percent of children in care have at least one sibling, the majority of these children do not live with their sibling(s).²⁰ While several states, including Iowa and Maine, have passed laws or taken efforts to promote sibling ties, this law makes it a federal requirement that state agencies make reasonable efforts to keep siblings together in out-of-home placements. These provisions apply only to children who have been removed from their homes, and not for siblings who may not be in care, although efforts to maintain these connections should be considered.

TITLE III—TRIBAL FOSTER CARE AND ADOPTION ACCESS

Section 301 – Tribal Access to IV-E: Beginning in fiscal year 2010, this section allows tribes to directly receive federal funds to operate their own child welfare programs. Tribes may also receive a portion of a state plan allotment to operate Chafee programs.

Analysis: Until enactment of this law, tribes had to negotiate a contract with the state in order to receive any Title IV-E funding, although more limited funding was sometimes available for certain federally recognized tribes through Title IV-B. Due to the difficulties in negotiating such contracts, more than half of federally recognized tribes in the U.S. do not have such an agreement.²¹

¹⁸ Clausen, J., Landsverk, J., Ganger, W., Chadwick, D., & Litrownik, A., "Mental health problems of children in foster care." *Journal of Child and Family Studies*, 1998.

¹⁹ American Academy of Pediatrics, "Health Care Coordination for Children in Foster Care: Unfulfilled Potential." 2008.

²⁰ Davis-Pratt, E. & Conway, T., "New Help for Children Being Raised by Grandparents and Other Relatives: Questions and Answers about the Fostering Connections to Success and Increasing Adoptions Act of 2008." Center for Law and Social Policy, Children's Defense Fund and other collaborating organizations, January 2009. Available online at:

http://www.alliance1.org/Public_Policy/welfare/raised_by_relatives.pdf

²¹ Hobbs Straus Dean & Walker, LLP, "General Memorandum 07-111," August 14, 2007.

Even the approximately 70 tribes with Title IV-E agreements faced serious challenges in providing out-of-home care. As the grantee in such agreements, states maintain responsibility for allocating funds. These agreements often do not include pass-through funding for the same services for which states receive money. The complexity of federal laws makes it difficult to navigate the foster care system without specialized training in law. The existing tie between receipt of federal Title IV-E services and Medicaid makes matters worse, leaving many Indian children without access to needed health care. These limitations have been especially hard on Indian families, 21% of which live below the poverty lines.²²

The new law implements the 2004 Pew Commission on Children in Foster Care's recommendation of direct Title IV-E funding for tribal administration of foster care.²³

Section 302—Technical Assistance: This section appropriates \$3 million for each fiscal year beginning in 2009 for technical assistance in implementing their programs, as well as a one-time \$300,000 grant for up to two years for tribes applying to the government to operate their own IV-E program.

TITLE IV – IMPROVEMENT OF INCENTIVES FOR ADOPTION

Section 401—Adoption Incentives Program: This section reauthorizes the adoption incentive payments program for fiscal years 2008 through 2012, updates to FY 2007 the adoption baseline above which incentive payments are made, and doubles incentive payments to states for adoptions of special needs children (from \$2,000 to \$4,000 per child), and for adoption of older children (from \$4,000 to \$8,000 per child). It also provides an additional incentive payment for states exceeding its highest ever foster child adoption rate since 2002.

Section 402 – Promotion of Adoption of Children with Special Needs: Beginning in fiscal year 2010, this section gradually “de-links” a child’s eligibility for federal adoption assistance payments from outdated Aid to Families with Dependent Children (AFDC) income standards. The complete phasing in of this provision occurs over nine years. Additionally, children who qualify for Supplemental Security Income (SSI) will automatically be considered children with special needs and therefore eligible for adoption assistance payments. Any savings resulting from these new eligibility criteria must be invested in services provided in Title IV-E and B.

Analysis: Previously, a child would have been eligible for assistance only if he/she was removed from a home where his/her parents met the state’s AFDC income eligibility requirements as of July 1996. Critics of these eligibility requirements argued that linking a child’s eligibility for IV-E adoption assistance payments did not make sense for a number of reasons. First, AFDC income standards have not been adjusted for inflation since 1996, as the program no longer exists. Second, critics argue that IV-E eligibility should be based on the child’s needs, not on his/her parents’ income.²⁴

The new law only provides for de-linking adoption assistance payments. Sen. Baucus (D-MT), Chairman of the Senate Finance Committee, has indicated his desire to address IV-E eligibility requirements for IV-E foster care payments as part of an overhaul of the child welfare financing system.

²² Government Accountability Office, “African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care.” July 2007. Available online at <<http://www.gao.gov/new.items/d07816.pdf>>

²³ Pew Commission on Children in Foster Care, “Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care.” Washington, D.C., May 2004. Available online at: <http://pewfostercare.org/research/docs/FinalReport.pdf>

²⁴ Center for Law and Social Policy & Children’s Defense Fund, “Fostering Connections to Success and Increasing Adoptions Act Summary.” 2008. Available online at <http://www.clasp.org/publications/FINAL_FCSIAA_LongSummary.pdf>

Section 403 – Information on Adoption Tax Credit: This section requires states to inform any individual who is adopting or considering adopting a child of existing federal adoption tax credits.

Analysis: This section was included due to concerns that taxpayers adopting through public child welfare agencies (rather than private agencies and/or attorneys) were not taking advantage of the adoption tax credit.²⁵

TITLE V—CLARIFICATION OF UNIFORM DEFINITION OF CHILD AND OTHER PROVISIONS

Sections 501, 502 and 502: These sections make a number of changes to the Internal Revenue Code with respect to tax exemptions, child tax credit limits, clarification of whom may claim a child. They also authorize the Treasury to invest cash in repurchase agreements and deny federal funding to individuals illegally living in the U.S.

TITLE VI – EFFECTIVE DATE

Section 601—Effective Date: This section makes all of the provisions of the bill, except those where another date is provided, effective as of the date of enactment (October 7, 2008). A delay is permitted for those portions requiring state legislative action until shortly after the next regular session of the state legislature.²⁶

CONGRESSIONAL BUDGET OFFICE

Cost Estimates: The Congressional Budget Office estimates that the law will reduce deficits by an estimated \$12 million between 2009-2018.²⁷ An estimated \$295 million in new outlays is offset by \$307 million in revenue generated by allowing the Treasury to invest in repurchase agreements and modifying criteria regarding child claims on income tax returns.

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About the Alliance for Children and Families and United Neighborhood Centers of America

The Alliance for Children and Families, a nonprofit association, was formed by the 1998 merger of Family Service America and the National Association of Homes and Services for Children. The Alliance represents over 370 nonprofit organizations across the nation that provide services and economic empowerment to children and families. Alliance agencies cover a wide spectrum of providers, including a diversity of faith-based organizations and nonsectarian agencies. Together, these organizations deliver more than \$2 billion annually in services to more than 8 million people in nearly 6,700 communities across the United States. More information about the Alliance is available at www.alliance1.org.

United Neighborhood Centers of America (UNCA) is a voluntary, nonprofit, national organization with neighborhood-based member agencies throughout the United States. Formerly known as the National Federation of Settlements and Neighborhood Centers, it was founded in 1911 by Jane Addams and other pioneers of the settlement movement. More information about UNCA is available at www.unca.org.

²⁵ Ibid.

²⁶ For more information about effective dates pertaining to specific provisions, please visit <http://www.alliance1.org/Public_Policy/welfare/raised_by_relatives.pdf>

²⁷ Congressional Budget Office, “Cost Estimate: H.R. 6893 Fostering Connections to Success and Increasing Adoptions Act of 2008.” December 23, 2008. Available online at <<http://www.cbo.gov/ftpdocs/99xx/doc9955/hr6893.pdf>>

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