



New Federal Law Overhauls U.S. Child Welfare Financing

from Fall 2008 Adoptalk

by Mary Boo, NACAC's assistant director

Adoptalk & Publications

Adoptalk:

- [News](#)
- [Parenting](#)
- [Policy](#)
- [Practice](#)
- [Recruiting Families](#)
- [Personal Stories](#)

Publications

Adoption Month

On October 7, President Bush signed the [Fostering Connections to Success and Increasing Adoptions Act](#) (Public Law 110-351)—the first comprehensive reform of federal child welfare financing in 28 years. The legislation was guided through Congress by Representatives Jim McDermott (D-WA) and Jerry Weller (R-IL) and Senators Max Baucus (D-MT), Charles Grassley (R-IA), and Jay Rockefeller (D-WV). NACAC is grateful to them and other child welfare champions, including Senator Blanche Lincoln (D-AR) and the many youth, caregivers, and tribal leaders whose personal stories helped make the case for reform.

The act will increase federal support to states so they can place more children permanently with relative guardians or adoptive parents, and enhance aid to foster youth. NACAC is pleased that, over time, the law will eliminate all income, resource, and family structure requirements related to Title IV-E adoption assistance. As Senator Baucus explained:

Thousands of children—especially children with special needs and older children—will be able to move from foster care to adoptive homes under this bill. ...[R]elatives will receive the support...they need to foster a child in their own family. And, Indian Tribes will finally have the same access to federal foster care and adoption dollars that states currently receive.

The law is effective October 7, 2008 unless otherwise noted or states must enact legislation to comply. Major provisions are explained below.

Increasing Adoptions

Expanding Title IV-E adoption assistance (Sec. 402) — Thousands of children receive no federal adoption assistance, primarily because their birth parents' incomes were higher than 1996 AFDC eligibility levels. Some of these youth get no aid, while others receive less support or lose benefits when they move to a new state. Denying children federal assistance also places an unfair financial burden on states. Since 1987, NACAC has argued that it makes no sense to tie a child's federal adoption assistance eligibility to the income of parents whose legal rights have been severed. We are thrilled the federal government has finally agreed.

Within 10 years, regardless of their birth parents' income, all children adopted from foster care who meet other IV-E criteria will be eligible for federal adoption assistance—which should increase their chances of being adopted and having adequate support. Beginning federal fiscal year (FY) 2010 (which starts October 1, 2009), children who have been in care for at least 60

consecutive months and youth adopted at age 16 or older will be eligible for IV-E adoption assistance. As shown below, eligibility will be phased in by age.

Age*	Year
16+	2010
14+	2011
12+	2012
10+	2013
8+	2014
6+	2015
4+	2016
2+	2017
any age	2018

Children placed with siblings who qualify due to age or length of time in care will also be IV-E eligible. Under the law, children who meet the medical or disability qualifications for supplemental security income benefits will now be considered to have special needs.

State savings due to expanded IV-E eligibility—hundreds of millions of dollars a year when all children are covered—must be invested in IV-B or IV-E child welfare services, including post-adoption services. NACAC will advocate that funds cover targeted recruitment for harder-to-place children and post-placement services for children who are adopted, placed with a legal guardian, or returned home.

Senator Rockefeller, a long-time adoption advocate, noted, “All adoptive families want is the opportunity to love their children and provide them with a healthy home environment and I will always fight to make sure that happens—because the children and the families who love them deserve the very best.”

Enhancing adoption incentives (Sec. 401) — Extended through 2013, the adoption incentive program has a revised baseline (FY 2007) and doubled awards for increases in older child and special needs adoptions. States can earn \$4,000 for each adoption that exceeds the baseline, plus \$8,000 for adoption increases of children nine and older, and \$4,000 for added adoptions of younger children with special needs. Annual authorized funding is \$43 million, although appropriations may not reach this level.

States can now earn incentives for exceeding their highest-ever adoption rate since 2002, if funds are available after the above bonuses are paid. A state’s adoption rate is the number of finalized adoptions from foster care in a fiscal year divided by the foster care caseload on the last day of the previous fiscal year. For example, if a state finalizes 100 adoptions in FY 2010 and its caseload was 1,000 on September 30, 2009, its adoption rate is 10 percent.

The award is calculated at \$1,000 times the number of adoptions that causes the state to exceed its previous highest rate. Continuing the above example, if the state’s highest rate had been 8 percent, the baseline would be 8 percent of

FY 2009's 1,000-child caseload or 80. The difference between this baseline (80) and the current year's adoptions (100) is multiplied by \$1,000 ($20 * \$1,000 = \$20,000$). HHS may make pro rata adjustments if funds are insufficient.

Another provision allows states 24 months from the payment date to spend incentive funds. NACAC has long advocated for this extension and hopes states will invest funds in post-adoption services.

Increasing awareness about the adoption tax credit (Sec. 403) — The law requires states to inform prospective adopters about their potential eligibility for the credit. This is a good first step, but NACAC believes the credit should be altered so it is more accessible to those who adopt from care. Many of these families do not have enough federal tax liability to use the non-refundable credit.

Helping Children Find Permanency with Relatives

Enabling states to receive federal funding for guardianship (Sec. 101) — Under the law, states can receive IV-E reimbursement for payments made to guardians who take permanent custody of their related foster children. Children in federally supported guardianships will also be eligible for Medicaid. To qualify:

- The child must have been eligible to receive IV-E foster care payments while living with the relative for at least six continuous months (or be an eligible child's sibling in the same placement).
- Return home and adoption must be ruled out.
- The child must have a strong bond with the caregiver, and the relative must be committed to permanently caring for the child.
- Youth 14 or older must be consulted.

This provision applies to future placements, except in states that have subsidized guardianship IV-E waivers. Those states can receive reimbursement for existing placements after the waiver ends.

Guardianship payments cannot exceed payments the child would have received in foster care. States must also document that they have discussed adoption with the caregiver and record why the relative chose not to adopt. Children who are placed in guardianship retain future eligibility for IV-E adoption assistance.

Notifying relatives (Sec. 103) — To ensure that kin have a chance to participate in children's care, states must identify and notify all adult relatives (unless domestic violence is an issue) within 30 days after a child is removed from his home. The notice must include details about:

- the child's removal,
- options for helping with the child's care,
- licensing rules and additional support available to licensed foster families, and
- any relevant guardianship programs.

Waiving licensing standards for kin (Sec. 104) — On a case-by-case basis, states can waive licensing standards unrelated to safety (such as house size)

for kin foster parents. The Department of Health and Human Services (HHS) must report on relative licensing standards, including the ratio of children in unlicensed and licensed homes, waivers granted and outcomes, reasons why some kin cannot be licensed, and advice about how to safely place more children in care with relatives.

Promoting Family Connections

Keeping brothers and sisters together (Sec. 206) — States must now make reasonable efforts to place siblings together in adoption, guardianship, or foster care, unless the placement would adversely affect any sibling's safety or well-being. When siblings are separated, states must make efforts to facilitate, as long it is safe, regular visitation or other contact.

Making Family Connections Grants (Sec. 102) — The law creates a new grant program as part of Title IV-B, part 1. Each year, up to 30 state, local, and tribal child welfare agencies and nonprofits can receive one- to three-year grants to support the following services for children in care or at risk of entering care:

- kinship navigator programs to help kin find resources to meet children's needs
- intensive family-finding efforts that identify and form connections with children's relatives
- family group decision-making efforts to plan for children in child welfare
- comprehensive residential substance abuse programs that keep children with their parents during treatment

Of the \$15 million in annual funding authorized for 2009 to 2013, the law reserves \$5 million for navigator programs, plus 3 percent for evaluation and 2 percent for grantee technical assistance.

Aiding Older Youth

Supporting youth after age 18 (Sec. 201) — Starting in FY 2011, states that support foster youth up to age 19, 20, or 21 will receive federal reimbursement. To qualify, youth must be IV-E eligible and:

- finishing high school or an equivalency program,
- enrolled in post-secondary or vocational school,
- participating in activities to enhance job opportunities,
- employed at least 80 hours/month, or
- medically incapable of meeting criteria.

For IV-E eligible youth who are adopted or placed with relative guardians at 16 or older, states will receive federal reimbursement if they extend adoption or guardianship payments beyond age 18. A current provision that allows states to extend support to disabled children adopted at younger ages will apply to children in IV-E guardianships as of FY 2011.

Extending independent living services and education vouchers (Sec. 101) — Youth adopted or placed in guardianship at age 16 or older will be eligible for federally funded independent living services and education and training vouchers.

Supporting youth as they transition from care (Sec. 202) — In the 90 days before youth age out of care, agencies must help them develop a transition plan with specific options for housing, health insurance, education, mentoring, support services, and employment help.

Enhancing Services to Children in Tribal Care (Sec. 301)

Tribes have long been responsible for children under their jurisdiction, but have only had access to IV-E funding through state contracts. Now tribes can receive IV-E funds directly or contract with states. The law also gives tribes access to some of the state's Chafee Foster Care Independence Program funds and requires tribes to offer independent living services.

With direct funding, tribes are better positioned to offer Native children necessary, culturally competent services. As Representative Earl Pomeroy explained, "This bill...puts tribal adoption and foster care one step closer to being on equal footing with states and gives tribes the ability to provide their children with the culturally appropriate care they deserve."

HHS is required to provide technical assistance, implementation services, and grants (up to \$300,000 per year for two years) to help tribes transition to operating their own programs. The tribal provisions will take effect October 1, 2009, and HHS must develop implementation rules within a year of enactment.

Improving Support to Foster Children

Tracking health care needs and services (Sec. 205) — For each foster child, states must develop a plan to coordinate and oversee health services that:

- provides initial and ongoing health care screenings,
- monitors and treats health needs,
- shares up-to-date medical information with providers,
- ensures health care service continuity,
- ensures oversight of prescription medication use, and
- consults with doctors and others about the child's health

Providing educational stability (Sec. 204) — To promote school continuity, state agencies are required to consider school issues (proximity to child's current school, fit with educational setting, etc.) when making placement decisions. Officials must keep children in their current school if it is in their best interests. States can now claim partial federal reimbursement for the cost of transporting children to their original school.

If a child has to change schools, the state must ensure immediate enrollment in a new school and transfer of the child's records. Unless medically incapable, every school-aged child receiving federal foster care, guardianship, or adoption payments must be enrolled full time in an elementary or secondary school, or have completed secondary school.

Expanding Training Opportunities (Sec. 203) — In the past, states could use IV-E training dollars only for public agency staff and foster or adoptive parents. Now these funds can be used to educate private agency and court staff, lawyers, guardians ad litem, court-appointed special advocates, and current or prospective relative guardians. The expansion should enhance

workforce quality and increase coordination between agencies and courts.

Conclusion

“With passage of this bill,” Senator Grassley observed, “...Congress is recognizing that safe and stable homes and families are fundamental to the quality of life and a brighter future for all children.” Advocates’ work is not done, however. Several of the law’s provisions—guardianship, benefits for youth 18 and older, and expanded training—allow federal reimbursement only if states decide to embrace these reforms. States must now create relative guardianship programs, offer assistance to older youth, and invest in training. In the coming months NACAC will partner with others to help states make necessary adjustments, and will lead efforts to strategize about implementing adoption assistance program changes.

NACAC applauds Congress for putting children first during a contentious election year. As Representative McDermott said, “This is landmark legislation, the most significant step forward on behalf of foster children in at least 10 years. It is bipartisan and bicameral and a testament to our ability to work together for the common good. Children are America’s future and...we are making an investment in their future and ours.”

- The child must attain this age by September 30 (federal fiscal year end) of the given year.

North American Council on Adoptable Children (NACAC)

970 Raymond Avenue, Suite 106

St. Paul, MN 55114

phone: 651-644-3036

fax: 651-644-9848

e-mail: info@nacac.org

[Feedback](#)