

Federal Child Welfare Legislative Update

Presented to the 2010 Annual Conference of the
Association of Administrators of the Interstate Compact
on the Placement of Children

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Via Webinar

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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) and Criminal Records Checks
- o Fostering Connections To Success and Increasing Adoptions Act of 2008 (Public Law 110-351)

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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.

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Safe and Timely: Home Study Requirements

- o As a title IV-E State plan requirement, title IV-E agencies must 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.
- o Title IV-E agencies 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.

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Safe and Timely: Home Study Requirements

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

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Safe and Timely: Interstate Considerations

- o Agencies must make effective use of cross jurisdictional resources and eliminate legal barriers to timely adoption
- o Agencies must consider in and out-of-State placements in permanency planning decisions, permanency hearings, and concurrent planning
- o Requires case-worker visits every 6 months for children in out-of-State foster care placements
- o Requires court grantees to assess their effectiveness in expediting interstate placements

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Safe and Timely: Case Review System

- o Requires case plans to include the most recent information available regarding the health and education records of the child
- o Agencies must 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 provide it at no cost to the child at the time the child is emancipated from foster care
- o Provides foster caregivers the right to be heard in any proceeding

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Criminal Records and Child Abuse and Neglect Background Checks: Overview

- o Title IV-E background check requirements for prospective foster and adoptive parents;
- o CAN Registries;
- o Confidentiality and
- o Monitoring and Documentation

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Criminal Records Checks: Prospective Parent

- o As was clarified recently in the Child Welfare Policy Manual, a prospective parent is one:
 - who is newly licensed or
 - whose home that had a previous license expired, in accordance with State policy, or
 - whose home license was terminated
- o Once the prospective parent has "passed" the Federal CRCs at one of the points in time listed above, the parent does not have to have another CRC for purposes of satisfying the Federal CRC requirement.

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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, the licensing entity, and any contracted party that performs licensing functions

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Criminal Records Checks

- o Delineates the criminal convictions that categorically exclude an individual from serving as a title IV-E 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

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Child Abuse and Neglect (CAN) Registries

- o Requires agencies 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 agency licensing/approving the home.
- o CAN requirement applies to prospective parents who will be licensed or approved by the title IV-E agency AND who will care for a child participating in the State's title IV-B/IV-E programs

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CAN Registry

An agency:

- o must comply with incoming requests for information on a household member of a prospective foster/adoptive if it maintains a CAN registry
- o that does not maintain a CAN registry itself is not required to provide information.
- o A title IV-E agency that believes that another agency maintains a CAN registry but is not responding appropriately to an information request should contact its ACF Regional Office.

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National CAN Registry

- o 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
- o Prior to funds being appropriated, HHS began an in-house feasibility study to address issues related to creating a national CAN registry.
- o In FY 2009, \$500,000 was authorized for HHS to continue conducting the feasibility study.

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Criminal Records Checks: Confidentiality

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

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Criminal Records Checks: Monitoring

- o Child and Family Services Reviews (CFSRs) Reviews/Oversight:
 - o ACF has partial review authority if we learn that a State may be operating out of compliance with the law.
- o Title IV-E Eligibility Reviews:
 - o Beginning in FY 2010, CB will verify that the agency has conducted criminal records checks, including fingerprint-based checks of the NCID, on prospective parents.
 - o This applies to reviews with a PUR of 10/01/2009-3/31/2010.

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Criminal Records Checks: Documentation

The preferred documentation is actual results of the CRC.

Other documentation that may be accepted includes:

- o a letter or report signed by appropriate title IV-E agency staff or licensing staff that details the CRC results
- o electronic documentation of the CRC results maintained in the title IV-E agency's automated information system
- o other official evidence that: 1) clearly verifies that a CRC of the NCID was conducted for the period in question, and 2) sufficiently substantiates that the prospective foster parent was not convicted of any of the prohibited felonies

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Fostering Connections: Overview

- o Creates a State and Tribal option to provide kinship guardianship assistance payments (GAP)
- o Provides an option for title IV-E agencies to extend title IV-E payments to age 21
- o Creates direct title IV-E funding to Indian Tribes
- o De-links Adoption Assistance from AFDC

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GAP: Child Eligibility

- o Child must have been removed from home (via VPA or involuntary removal)
- o Child must have lived with the prospective relative guardian for a minimum of six consecutive months.
- o Child must have been eligible for title IV-E foster care maintenance payments during that six months
- o During the six months that the child was living with the prospective guardian, the prospective relative guardian must have been fully licensed as a foster family home.

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GAP: Child Eligibility

- o As announced in recent policy, agencies may convert legal guardianships that existed prior to the title IV-E plan submission, including those that may have been supported through State or Tribal funds, to the title IV-E GAP program provided that those children meet all relevant eligibility criteria.

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GAP: Child Eligibility, Permanency and Attachment

The title IV-E agency must determine that:

- o reunification with parents and/or adoption cannot be a permanency option for the child
- o the child demonstrates a strong attachment to the prospective relative guardian
- o the prospective relative guardian has a strong commitment to caring permanently for the child

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GAP: Prospective Guardian Requirements

Before a GAP payment may be made, the title IV-E agency must conduct

- o fingerprint-based criminal records checks of the NCID of the relative guardian(s)
- o CAN registry checks of relative guardian(s) and other adults living in the guardian's home

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GAP: Agreements

The GAP Agreement must:

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

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GAP Agreements, continued

- o specify the services and assistance for which the child and guardian are eligible pursuant to the agreement;
- o specify that it is in effect irrespective of the State in which the relative guardian resides;
- o be provided to the relative guardian and
- o specify that agency must pay the total costs of expenses associated with obtaining legal guardianship of the child, not to exceed \$2,000.

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GAP: Siblings

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

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GAP: Payments

- GAP payments may not exceed the amount that the child would have received had the child been in a foster family home.
- The payment ceiling may be different for GAP and for Adoption Assistance.

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GAP: Other Provisions

- Extends categorical eligibility for Medicaid to children receiving title IV-E GAP payments.
- Permits agencies 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.
- 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.

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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.

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

- o Title IV-E agencies may opt to extend title IV-E payments to youth between ages 18 and 21 under certain circumstances
- o Option applies to States and Tribes for foster care, adoption & kinship guardianship programs
- 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

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Fostering Connections: Option to Extend Title IV-E Payments to Age 21 (continued)

- o The conditions for continued title IV-E payments apply to youth age 18 or older 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.

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CFCIP and ETV

- o Amends the Chafee Foster Care Independence Program (CFCIP) to add the purpose of providing services to youth who leave foster care for kinship guardianship or adoption after age 16.
- 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.

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

- o 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
- o All title IV-E requirements apply equally to Tribes and States, except as otherwise described in the law.
- o Creates some definitions and plan requirements specific to programs operated by Tribes.

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Tribal Title IV-E Plan

- o 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
- o A Tribe must designate a title IV-E agency that must submit a plan to the ACF Regional Program Manager.

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Tribal Title IV-E Plan (continued)

- o 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.
- o 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.
- o A Tribal title IV-E plan must also describe the Tribe's title IV-E service area and population

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Tribal Title IV-E Requirements

- o 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
- o 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

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Tribal In-Kind Funds

- o Allows Tribes receiving title IV-E to use in-kind funds from third-party sources as match for administrative and training costs
- o Places limits on the amount of in-kind expenditures and types of third-party sources

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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.

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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.

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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).

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**Fostering Connections:
Short-Term Training**

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

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**Fostering Connections:
Adoption Assistance Program**

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

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**Fostering Connections:
Adoption Assistance Overview**

- Applicable child
 - Age/time in care/sibling status
 - Special needs
 - Other eligibility criteria
- Non-applicable child eligibility requirements
- Some requirements apply to both (non) applicable children
- The title IV-E agency must provide adoption assistance to every child it determines is eligible, unless the prospective adoptive parents decline such assistance.

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Adoption Assistance: Applicable Child, Age

A child is an applicable child if the child:

- o has attained the applicable age described in the SSA any time before the end of the Federal FY in which the adoption assistance agreement is entered
- o The SSA establishes age 16 as the applicable age beginning in FY 2010
- o During each subsequent FY, the age to apply the revised program rules decreases by two years

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Fostering Connections: Adoption Assistance, Applicable Child, Time in Care or Sibling Status

A child also is an applicable child if the child:

- o has been in foster care for 60 consecutive months (5 years)
- OR
- o is a sibling of an applicable child

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Fostering Connections: Adoption Assistance, Applicable Child and Special Needs

Special needs determination:

- o Child cannot or should not be returned to the home of his parents AND
- o Child:
 - o has a specific factor or condition because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance and medical assistance, OR
 - o meets all of the medical or disability requirements for Supplemental Security Income (SSI) AND
- o Reasonable but unsuccessful effort to place the child with adoptive parents without title IV-E adoption assistance or medical assistance.

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**Fostering Connections:
Applicable Child, Additional Eligibility Criteria**

An applicable child with special needs also must meet one of the four following criteria:

- o Child is in the care of a public or licensed private child placement agency pursuant to an involuntary removal (contrary to the welfare) OR voluntary placement agreement OR voluntary relinquishment
- o Child meets all SSI medical and disability requirements
- o Child is a child of a minor parent in foster care
- o Child was eligible in a prior adoption

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**Adoption Assistance:
Applicable and Non-Applicable Child**

- o Title IV-E agency may extend adoption assistance payments and assistance up to age 21 if:
 - o the title IV-E adoption assistance agreement was entered into after the child turned age 16 and the child meets certain conditions OR
 - o the title IV-E agency determines that a child has a physical or mental handicap that warrants the continuation of assistance.
- o Eligibility for adoption assistance after GAP
- o Non-recurring expenses

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**Fostering Connections:
Adoption Assistance, Other Provisions**

- o Reinvestment requirement
- o An applicable child with special needs who is not a citizen or resident of the U.S. and either was 1) adopted in another country or 2) brought to the U.S. for the purposes of adoption is categorically ineligible for adoption assistance

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Adoption Incentives

- 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).

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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

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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 Good faith negotiation with Tribes seeking to develop an agreement with the State to administer title IV-E plan

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Conclusion

- Keep abreast of changes and additions made to the Child Welfare Policy Manual and to Children's Bureau's website
- Keep abreast of new and clarified policy announcements via list-serves
- Keep in touch with your Regional Office and ask questions when you have them

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