Fostering Connections: Changes to IV-E Adoption and Guardianship Assistance Programs

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Presentation Overview

- Review of Fostering Connections (P.L. 110-351)
- Changes to Adoption Assistance Program
- Establishment of Guardianship Assistance Program
- Option to Extend Assistance to Youth Up to Age 21
- Medicaid and title IV-E programs
The Fostering Connections to Success and Increasing Adoptions Act of 2008

- Amended titles IV-B and IV-E of the Social Security Act (the Act) to add new program requirements and create new program options.
- Made significant changes to address areas such as Tribal child welfare, kinship guardianship, education and health care requirements for children in foster care, availability of adoption assistance, and older youth in foster care.
Overview of Fostering Connections (cont’d)

- Option for federally recognized Indian Tribes, Indian Tribal Organizations and Tribal consortia to operate a title IV-E program
- **Option to provide title IV-E Kinship Guardianship Payments**
- **Option to extend title IV-E payments up to age 21 for youth who meet certain education and employment criteria**
- De-links title IV-E Adoption Assistance from AFDC eligibility (including family income standards from 1996)
Overview of Title IV-E Adoption Assistance

- Title IV-E of the Act requires that agencies having an approved IV-E plan shall enter into adoption assistance (AA) agreements with the adoptive parents of children with special needs.
- The Act also requires IV-E agencies to make payments of nonrecurring adoption expenses incurred by or on behalf of parents in connection with the adoption of a child with special needs.
- Therefore, if a child meets the criteria in section 473 of the Social Security Act, the IV-E agency is required to provide IV-E AA payments.
Overview of AA, cont’d

- A IV-E agency is required to actively seek ways to promote the AA program.
- If a IV-E agency fails to provide AA to a family, the family may seek recourse through a fair hearing.
- If a IV-E agency systemically fails to provide AA to eligible children, the Department would conduct a partial review to determine if the State should engage in program improvement to address the issue.
Eligibility

- A title IV-E agency must determine a child’s eligibility for IV-E AA based on whether the child is an applicable child or not an applicable child.

- Once a determination is made as to whether the child is an applicable child or not, then the child must also meet the following:
  - One of Four Pathways to Eligibility and
  - A Three-Part Special Needs Determination.
Who is an Applicable Child?

- Fostering Connections revised the eligibility criteria for title IV-E AA by delinking AFDC eligibility from title IV-E AA.
- The revised eligibility criteria is phased in for specific children over a nine-year period that began in Federal fiscal year (FFY) 2010 and ends in FFY 2018.
- Until FFY 2018, there will be two separate sets of eligibility criteria, one of which includes the AFDC link.
- An “applicable child” is a child with special needs, to whom the revised eligibility criteria, which delinks AFDC, is applied.
Who is not an Applicable Child?

- A child who is not an “applicable child” is one with special needs whose eligibility pathway for title IV-E AA still may be linked to eligibility for the former AFDC program if the child cannot access the program through one of the other three pathways.
Applicable Child

Applicable child criteria
- To be considered an applicable child, the child must meet one of the following:
  1. Age.
  2. Length of stay in foster care.
  3. Sibling of an applicable child.
Four Eligibility Pathways for an Applicable Child

To be eligible, an applicable child must be determined by the State to meet the three-part special needs test and must meet one of the following pathways:

1. At initiation of adoption proceedings, the child was in the care of a public/licensed private child placement agency pursuant to: a judicial determination of contrary to welfare or a voluntary placement agreement or voluntary relinquishment; or
2. Child is eligible for Supplemental Security Income (SSI); or
3. Child is a child of a minor parent in foster care; or
4. Child was eligible for IV-E AA in a prior adoption.
Applicable Child Pathway 1: Initiation of Adoption Proceedings

Child must meet specific criteria at the initiation of adoption proceedings:

- Be in the care of a public or private child welfare agency or Indian Tribal organization via
  - a contrary to the welfare (CTW) determination OR
  - a voluntary placement agreement OR
  - a voluntary relinquishment.
Applicable Child Eligibility
Pathway 2: SSI

Child meets all medical or disability requirements for Supplemental Security Income (SSI) at the initiation of adoption:

- Child does not have to meet the financial need criteria of SSI.

- The title IV-E agency may make such a determination.
Applicable Child Eligibility
Pathway 3: Minor Parent

Child is the child of a minor parent who is in foster care and the child:

- is living with the minor parent in a foster family home or a child care institution AND the minor parent was removed from home via a CTW determination, a VPA or a voluntary relinquishment.
Applicable Child Eligibility Pathway 4: Prior Adoption

Child was eligible in a prior adoption and:

- the prior adoption dissolved and the adoptive parents’ rights have been terminated or the adoptive parents have died and the child remains a child with special needs and

- the agency has entered into a new adoption assistance agreement.
Four Eligibility Pathways for a Child Who is not an Applicable Child

To be eligible for IV-E AA, a child who is not an applicable child must be determined by the IV-E agency to have special needs and must meet one of the following pathways:

1. Child is receiving or eligible for AFDC at removal.
   Removal is via a contrary to welfare determination OR a voluntary placement agreement.
2. Child is eligible for SSI or
3. Child is a child of a minor parent in title IV-E foster care or
4. Child was eligible for IV-E AA in a prior adoption.
Not an “Applicable Child:”

Eligibility Pathway 1: AFDC

Child must have been eligible for AFDC (as of July 16, 1996) in the home of removal.

Removals via a CTW:
- Must be in the first court order
- No reasonable efforts requirement.

Removals via a VPA:
- The child must have been under the placement/care responsibility of the title IV-E agency.
- At least one title IV-E FC maintenance payment must have been made on behalf of the child under the VPA.
- No 180 days best interest determination requirement.
AFDC Pathway, continued

- Removals via a voluntary relinquishment to a public or a private, non-profit agency are permissible if:
  - there is a petition to the court to remove the child from his/her home within six months of the time the child lived with the specified relative from whom s/he was removed and
  - there is a subsequent judicial determination to the effect that remaining in the home would be contrary to the child’s welfare.
Not an Applicable Child Eligibility Pathway 2: SSI

Child is eligible for SSI:
- Must be determined fully eligible for SSI prior to the adoption being finalized.
- Only SSA can determine a child’s SSI eligibility and provide the appropriate eligibility documentation to the title IV-E agency for the child’s file.
- The manner of a child’s removal from his/her home, including whether the child is voluntarily relinquished to an individual or private agency, cannot be a factor for the SSI path to eligibility.
Not an Applicable Child Eligibility Pathway 3: Minor Parent

Child is the child of a minor parent who is in title IV-E foster care.

- The child’s costs are covered by the minor parent’s title IV-E foster care maintenance payment. This differs from the applicable child minor parent pathway.

- The child must meet the criteria prior to the finalization of adoption.
Not an Applicable Child
Eligibility Pathway 4: Prior Adoption

Child was eligible for AA in a prior adoption:

- and the prior adoption dissolved and the adoptive parents’ rights have been terminated OR the adoptive parents have died and

- the child remains a child with special needs and

- the agency has entered into a new adoption assistance agreement.
Major Differences: Applicable Child vs. Not An Applicable child

- **AFDC:**
  - Not an applicable child must meet AFDC criteria
  - Applicable need not meet AFDC criteria

- **SSI:**
  - Not an applicable child must meet medical, disability and financial requirements of SSI
  - Applicable child must meet only medical or disability
Applicable Child vs. Not An Applicable child (cont’d)

- **Child of a minor parent:**
  - Not an applicable child’s cost in foster care must have been covered by the FCMP made on behalf of minor parent.
  - Applicable child need only reside in foster care with minor parent. Minor parent must be in foster care through judicial action, VPA, or voluntary relinquishment.

- **Prior adoption:** No noteworthy distinctions.
AA after Disruption of Legal Guardianship

- Section 473(a)(2)(D) of the Act states that when determining the eligibility for adoption assistance payments of a child in a legal guardianship, any kinship guardianship payments made on behalf of the child shall considered never to have been made.
Title IV-E Guardianship Assistance Program (GAP)
Title IV-E GAP - Overview

- A title IV-E agency may elect to enter into kinship guardianship assistance agreements to provide payments on behalf of children to relatives who assume legal guardianship for children for whom they have provided care as foster parents.
Title IV-E GAP – Defining Relative

- A title IV-E agency has **considerable flexibility** in defining “relative” for the purposes of the GAP.
  - e.g., a definition may be broad and include extended family, friends, Tribal kin and/or ‘fictive’ kin.

- **We encourage** the IV-E agency to have a definition consistent with the relative notification provision that will support the identification and notification of potential relatives/kin.
Title IV-E GAP – Conditions for Guardianship

- The following eligibility criteria must be applied to every child and **may not** be changed:
  - Criminal record checks.
  - Return home/adoption are not options for the child.
  - Child has attachment to guardian and guardian has strong commitment to care for child.
  - A child who has attained age 14 has been consulted about the guardianship.

- In addition, the GAP **must be implemented statewide/service area-wide**
  - Child must be eligible for title IV-E foster care for at least 6 months, while in the home of the prospective guardian, but the agency has the discretion to extend that amount of time.
GAP – Agreements and Payments

- A GAP agreement must include the following terms:
  - The agency will reimburse for total nonrecurring costs up to $2,000.
  - The agreement is in effect regardless of the State/service area of residence.
- If specified in the GAP agreement, an agency has the following flexibility:
  - May require periodic renewals of agreements
  - May adjust the amount as the child ages or needs change.
  - May continue payments if a child moves out of the guardian’s home to attend college or to live independently.
  - May reduce GAP payments when other sources of income are received by the guardian or child.
GAP – Agreements and Payments (contd)

- A GAP payment must be made in order for the child to be categorically eligible for Medicaid.

- An agency must stop GAP payments in certain circumstances, such as when:
  - The guardian is no longer legally responsible for the child under age 18.
  - The guardian is no longer providing support to the child.
GAP – Siblings

- A title IV-E agency may make GAP payments on behalf of siblings of an eligible child placed in the same home.
- The title IV-E agency must pay non-recurring expenses of sibling, not to exceed $2,000.
- Sibling is not required to meet eligibility criteria.
- It does not matter whether the eligible child or sibling is placed first in the home.
Extending Title IV-E Assistance to Youth Up to Age 21
Overview

- A title IV-E agency may opt to extend title IV-E funding for youth up to age 21 for youth who meet certain education and employment criteria.
Extending Title IV-E Up to Age 21

- If the agency chooses to expand the definition of child and extend title IV-E funding to youth over age 18, the selected age must apply to the title IV-E foster care, adoption assistance and, if applicable, guardianship assistance programs.

- CB encourages a title IV-E agency to expand the definition of child up to age 21.
  - If the agency wishes to extend assistance over age 18, but only up to age 19 or 20, the agency must submit a description as to why the agency is choosing a lower age.
Educational and Employment Conditions for Youth 18+

- A title IV-E agency may design its child welfare programs to provide extended care to youth in any *or all* of the educational or employment circumstances *or* to youth incapable due to a medical reason.

- In designing its program, the agency is given considerable flexibility in relation to these conditions, such as:
  - Including only one, some or all conditions;
  - Determining how the agency will verify or obtain assurances that the youth meets the conditions, and the frequency of the verifications.
Medicaid and Title IV-E
Medicaid

• Title IV-E of the Act provides categorical Medicaid eligibility, available in the State of residence, to:
  • a youth on whose behalf title IV-E foster care maintenance payments or guardianship assistance payments are made, or
  • a youth who is subject to an adoption assistance agreement
Medicaid (cont’d)

- This categorical eligibility includes youth up to age 21 per section 475(8)(B) of the Act.

- Such a youth is eligible for Medicaid whether or not the title IV-E agency in the State of residence has taken the option to provide extended assistance per section 475(8)(B) of the Act.
POLICY RESOURCES

- CB Website

- Regional Offices
  - Children’s Bureau Regional Program Manager Contact Information

- Questions about this presentation?
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It's QUESTION TIME!!