



NEW FEDERAL FOSTER CARE LEGISLATION: WHAT IT MEANS FOR TEXAS

On October 7, 2008, the President signed the Fostering Connections to Success and Increasing Adoptions Act of 2008 (H.R. 6893). The act overhauls the federal child welfare structure for the first time since the Adoptions and Safe Families Act in 1997. The law contains new requirements, changes federal financing for adoptions, and provides additional financial assistance for various optional programs.¹ For Texas, none of the changes require new legislation, though the state must appropriate additional funding to fully benefit from the provisions of the new act. This policy paper discusses provisions of the federal legislation and the potential for helping Texas children.

- **Fostering Connections to Success and Increasing Adoptions Act of 2008 is major new federal legislation for abused and neglected children.**
- **The act does not require new state legislation but may require additional state appropriations for DFPS.**
- **DFPS should do a thorough assessment of the act to maximize benefits under the new law, including doing a cost-benefit analysis of providing a larger kinship subsidy.**

New Requirements Educational Requirements

What the act requires: States must coordinate with local educational entities to ensure that children remain in their original school after removal unless it is not in the child's best interests. The law appears to override local school district residence or attendance zone policies that would force foster children out of their original school. States must also ensure school-age children are enrolled in school. The act expands the definition of foster care maintenance payments to include paying for reasonable travel to the child's original school.

What it means for Texas: The Department of Family and Protective Services (DFPS) is completing its policies regarding the education of children in foster care. DFPS may need to revise its draft to fully comply with this new law. DFPS, the Texas Education Agency and local school districts may also need to enter into memoranda of understanding to ensure effective coordination to keep foster children in their original school unless it is not in their best interest.² DFPS must determine how to incorporate transportation costs into the foster care payment structure (i.e., a separate rate for foster care parents providing transportation, a reimbursable expense, etc.). New federal appropriations are not required as foster care payments are an entitlement, but additional state appropriations may be necessary to cover DFPS' portion of the transportation costs.

Medical Treatment

What the act requires: States must develop a plan for ongoing oversight and coordination of health care services for a child in foster care. The plan must ensure continuity of care including establishing a medical "home" for each

foster child. It must ensure oversight of prescription medication. It must also schedule for initial and follow-up health screenings and describe how health needs identified through the screenings will be monitored and treated. Finally, it must identify how medical information for foster children will be updated and appropriately shared, which may include development and implementation of an electronic health record.

What it means for Texas: The new STAR Health Plan for children in DFPS' custody appears to meet the federal requirements. CPPP will soon release a policy page discussing the STAR Health Plan and its implementation.

Notification of Relatives

What the act requires: Within 30 days of removing a child from a parent's custody, states must exercise due diligence to identify and notify all grandparents and other adult relatives of the child, except in cases of family violence. The act does not define the extent of "other" relatives who must be notified or the manner of notification. Future federal regulations may provide clarification.

What it means for Texas: Regarding the identification of relatives, DFPS and the court currently must provide with a "child placement resource form" on which the parent identifies up to three relatives available for placement (Family Code § 261.307 and § 262.201(a)(2)). DFPS policy also requires the investigator to ask any available relatives for names and addresses of other relatives (CPS Handbook § 6121.42). It is unclear whether these efforts satisfy the federal requirements, as the statute does not define "due diligence." DFPS may need to adapt its policies to include asking the parents about all relatives, even if they may not be available for placement, and making similar inquiries of the child, to the extent age appropriate. DFPS has no published policies regarding notification to relatives, so it may need to adopt such policies in conformity with the federal requirements. The act does not require legal service of process on relatives, just administrative notice.

Sibling Placement

What the act requires: States must place siblings together when possible. Otherwise, the act requires frequent visitation among the siblings unless it is not in their best interests.

What it means for Texas: DFPS policy already requires placing siblings together when possible or be in contact at least once a month if not placed together (Texas Administrative Code (TAC) § 700.1355; CPS Handbook § 6513).

Transition Plan for Emancipating Youth

What the act requires: During the 90-day period before a youth will emancipate, a transition plan must be developed.

What it means for Texas: DFPS may need to amend its policy for emancipating youth to conform to the federal requirements. Under current policy, general discharge planning for a youth who will emancipate should begin at least 6 months before emancipation, but specific planning begins only 30 to 45 days before emancipation (CPS Handbook § 6710 and § 6723).

Inform Adoptive Parents of Tax Credit

What the act requires: States must inform adoptive parents of their potential eligibility for the federal tax credit.

What it means for Texas: DFPS may need to adopt a policy to conform to the federal requirement as it does not have an explicit published policy to inform adoptive parents about the tax credit.

Changes to the Current Federal Financing Structure

Adoption Incentives to States

What the act does: The adoption incentive program is reauthorized through 2012, and the base year from which bonuses to the state are calculated is updated to 2007. States will receive a larger incentive payment when there is an increase (using 2007 as a base) in their number of older-child or special-needs adoptions. The incentive payment for an increase in the number of older-child adoptions is

now \$8,000/child, up from \$4,000/child, and the payment for an increase in the number of special needs adoptions is now \$4,000/child, up from \$2,000/child. To the extent that federal money remains after paying incentives, states may qualify for additional payments if their adoption rate³ exceeds the highest rate recorded for any year since federal fiscal 2002.

What it means for Texas: The base level of adoptions that Texas must exceed to obtain the incentive payments did not change. 2007 would have been the base year for Texas under the old federal provision. In 2007, however, Texas had a record number of adoptions. This high base level combined with a recent decline in the number of children entering foster care may dramatically reduce incentive payments. On the other hand, many Texas children in foster care are free for adoption. Texas' eligibility for the payments will depend on whether it can increase adoptions over its record high in 2007.

Adoption Subsidies

What the act does: Eliminates the “look back” requirement which used eligibility standards from 1996 under the old Aid to Families and Dependent Children program to determine whether a special needs child was eligible for an adoption subsidy. The provision applies only to new adoptions. It will be implemented over time starting in federal fiscal 2010 with those who are 16 years or older or who have been in foster care for at least five years. The provision will be implemented for all children by federal fiscal 2018.

What it means for Texas: Once the provision takes effect in federal fiscal 2010, DFPS should save money. DFPS provides state-funded subsidies for certain children who do not qualify for a federal subsidy (TAC § 700.804; CPS Handbook § 1563.2). Some of those children adopted in the future will qualify for the new federal subsidy.

Additional Federal Funds Now Available Kinship Guardianship Program

What the act does: If the state adopts (or already adopted) a program to provide payments to relatives who become the legal guardian of children in foster care, the federal

government will pay the state for part of the cost. Payment to the relative cannot exceed the foster care rate, and the state must enter into a written, binding kinship agreement. Under such a program the child remains eligible for Medicaid. If the child is 16 years or older at the time of the guardianship, the payments can be extended until the child turns 22, and the child can still receive independent living services. To qualify for federal funds, the relative must be licensed as a foster parent, although non-safety-related requirements can be waived on a case-by-case basis. The statute does not define a “non-safety” requirement. The child must have resided with the relative for at least 6 months prior to the guardianship, and during that time the child must qualify for foster care payments. It is unclear whether this means that the relative must be licensed during the entire 6 months period before the legal guardianship or only for some shorter period of time. It is also unclear whether the child must receive foster care payments while in the relative's home. Although the U.S. Department of Health and Human Services (HHS) is not required to adopt regulations related to the program, HHS may do so to clarify some of these issues.

What it means for Texas: In Texas, a permanent managing conservator (PMC) functions as a legal guardian. With the new federal funds available, Texas can create a payment program for relatives with PMC which could increase the number and quality of relative placements. This could improve outcomes for children and save money due to fewer children placed in foster care.

But implementing such a program will have a significant cost. Currently, eligible relatives who become a PMC get reimbursed for approved expenses up to \$500 a year for up to three years (TAC § 700.1011). For the new program to have the desired impact, the payment structure must be much more generous⁴ and some of those new costs must be paid with non-federal funds. Moreover, to use the federal funds, DFPS must make substantial administrative and practice changes. Unlike in other states, most relatives in Texas acting as guardians are not licensed foster parents: Many do not know they can be licensed, while others

cannot or do not want to comply with the extensive licensing requirements or do not want an ongoing relationship with the state. To overcome these barriers, DFPS must develop outreach programs and work more cooperatively with relatives. DFPS must also adopt regulations defining a “non-safety” related requirement along with streamlined procedures for case-by-case waivers.

In addition to the increased costs DFPS will incur in implementing and supporting such a program, the overall cost of relative care prior to PMC will likely increase. As discussed above, relatives will probably have to be licensed for some period of time before taking PMC. Once relatives become licensed, however, they qualify for foster care payments significantly higher than payments to unlicensed relatives.

In sum, a new kinship payment program will improve quantity and quality of relative care but it will cost more. Although the new program may save money due to fewer foster placements, DFPS will have to pay a portion of the more generous kinship payment, the increased administrative costs to get relatives licensed, and the increased costs prior to PMC as more relatives are licensed and paid at the foster care rate. Texas should conduct a cost-benefit analysis should to determine the advisability of adopting such a program.

Foster Care Payments for Older Youth

What the act does: If the state extends foster care payments after the youth’s 18th birthday (with a limit of up until the child turns 22), the federal government will pay the state for part of the cost, starting in fiscal 2010. Moreover, youth 18 years and older living independently in a supervised setting (e.g. a non-profit youth shelter) will qualify for federal foster care payments. HHS will adopt regulations about what types of supervised settings qualify. To qualify for federal funds for payments after his or her 18th birthday, a youth must be in high school or its equivalent, enrolled in college or a vocational school, in an employment program, or employed.

What it means for Texas: DFPS uses state funds to fully pay for youth who remain in foster homes after their 18th

birthday under certain specified circumstances (TAC § 700.316). Starting in fiscal 2010, the federal government will pay DFPS for part of these costs, which should save DFPS money.

With respect to those in independent living arrangements, DFPS acknowledges such arrangements as authorized for youth 16 years and older if it is a part of the youth’s preparation for adult living (TAC § 700.1320(c)(1)) but does not pay for the costs (TAC § 700.316). Under the new law, such placements will qualify for federal payments for youth 18 years or older. To obtain federal funds, however, DFPS must adopt policies that conform to the new federal regulations for independent living arrangements. It must also pay its portion of the payments for the qualified independent living arrangements which may require more appropriations.

Extension of Adoption Subsidies For Children 16 Years or Older

What the act does: To encourage adoptions of older children, if the state chooses to extend adoption subsidies beyond the youth’s 18th birthday (with a limit of up until the child turns 22) for children 16 or older when adopted, the federal government will pay the state for a portion of the cost. To qualify, the child must be in high school or its equivalent, enrolled in college or a vocational school, in an employment program, or employed.

What it means for Texas: If DFPS extends adoption subsidies, DFPS policy must be amended as it currently provides that benefits terminate when the child turns 18 (TAC sec 700.847). DFPS must also fund a portion of the additional payments, which may require additional appropriations. The additional costs, however, may be offset if a greater number of older children who would have otherwise stayed in foster care and emancipated are instead adopted.

Extension of Independent Living Services For Children 16 Years or Older Who Are Adopted

What the act does: Children who were 16 years or older when adopted and previously eligible for independent living services remain eligible even after the adoption.

What it means for Texas: DFPS only provides preparation for adult living (PAL) services to children likely to remain in foster care until they are at least 18 (TAC § 700.1602). If DFPS wants to serve the additional youth now eligible under federal law, it may have to revise its policy and will probably need more state funds. DFPS is not required to pay for any specified portion of the PAL services to access the federal funds. But a limited amount of federal funds is allotted to each state, regardless of the cost of such services. DFPS will have to bear any increased costs beyond Texas' maximum allotment. But these costs may be mitigated by reduced social costs if the extension of benefits helps older youth who are adopted more successfully transition to adulthood.

Expanded Short-Term Training

What the act does: Federal funds available for administrative costs now include training for relatives obtaining PMC; state-licensed or state-approved child welfare agencies; court staff; attorneys for the child welfare agency, children or parents; and court-appointed special advocates. The federal government pays the state for 55 percent of the training costs in federal fiscal 2009 with the rate increasing every year until it reaches 70 percent in federal fiscal 2012. The training must be short-term and increase the ability of the participants to provide support and assistance to foster and adopted children.

What it means for Texas: To the extent DFPS already has such training programs, federal money can be used to offset some of the costs. Implementation of any new programs may require additional appropriations to fund DFPS' portion of the costs.

Family Connection Grants

What the act does: The federal government will provide matching grants to state or local public agencies or private

non-profits who work with foster children or children in kinship care for: (1) a program to help kinship caregivers to better meet the needs of the child in their care; (2) a program that uses technology to find biological family members for children in the child welfare system and explore ways to find permanent family placements for the children; (3) Family Group Decision Making (FGDM) programs that enable families to make decisions and to develop plans for the children in the system; or (4) Residential Family Treatment Programs that enable parents and their children to live in a safe environment for at least 6 months and that provide appropriate referrals and services to support the family. The grants are for up to 3 years, and the federal government pays for 75 percent of the costs in the first and second year of the grant and 50 percent of the costs in the third year. The grantee may fund up to 50 percent of its portion of the costs with in-kind plant, equipment or services.

What it means for Texas: DFPS can now apply for federal funds to offset some of the costs of its current FGDM program. To the extent DFPS uses technology to locate biological parents or relatives, it can now apply for matching federal funds to offset some of the costs. DFPS should also assess whether any of its current kinship programs or residential programs might be eligible for grants. For new programs, DFPS may want to leverage private dollars by providing seed money to private non-profit agencies that can also apply for federal funds to create such programs. Any new programs provided or supported by DFPS would require additional appropriations.

Tribal Foster Care and Adoption Access

What the act does: Native American tribal governments can access federal funds for foster and adoption assistance payments for children in their care, and \$3 million is authorized for a national technical assistance center and to provide one-time technical assistance grants to tribes.

What it means for Texas: In state fiscal 2007, Native American children represented only 0.3 percent of all confirmed abuse or neglect victims. None of three

federally recognized tribes in Texas have an agreement with DFPS to draw foster care assistance on their own. DFPS should evaluate any opportunities available in this new legislation to improve tribal response to child maltreatment.

Conclusion

The Fostering Connections to Success and Increasing Adoptions Act of 2008 is a significant federal commitment to our nation's children. Although only time will tell the full policy implications of the act, Texas should start now to maximize the benefits the new legislation provides to help our state's maltreated children heal and grow into productive citizens.

¹ For an extensive discussion of Texas' current use of federal financing to fund its child welfare activities refer to our "Federal Funds for Texas CPS" policy brief, available at <http://cphp.org/files/4/Fed%20Funding%2007.pdf>.

² The McKinney-Vento Homeless Education Assistance Act of 2001 (McKinney-Vento) also addressed keeping foster care children in their original school. But the U.S. Department of Education narrowly interpreted the act to include only those children in a shelter awaiting placement in a foster home. As a result, DFPS did not extend the benefits of the act to children once they were placed. The act also did not provide funding for transportation costs to cover the inclusion of foster care children. For more details on McKinney-Vento and of education issues related to children in foster care, see CPHP's "Report Card On The Education Of Foster Children," <http://cphp.org/files/4/CPHP%20Foster%20Care%20Education%20Policy%20Page%20319.pdf>.

³ Number of completed adoptions divided by the number of children in foster care on the last day of the preceding fiscal year.

⁴ If Texas ultimately decides to adopt a more generous kinship payment program, DFPS should set the payment below the adoption assistance payment to ensure that relatives who might otherwise adopt do not have a financial incentive to take the less permanent option of PMC.

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