



HEARING ON
THE FOSTERING CONNECTION TO SUCCESS
AND
INCREASING ADOPTIONS ACT OF 2008
(PL 110-351)

UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON INCOME SECURITY
AND FAMILY SUPPORT

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The Child Welfare League of America (CWLA) is a ninety year-old non-profit organization representing hundreds of state and local child welfare organizations including both public and private, and faith-based agencies. CWLA members provide a range of child welfare services from prevention to placement services including adoptions, foster care, kinship placements, and services provided in a residential setting. CWLA's vision is that every child will grow up in a safe, loving, and stable family and that we will lead the nation in building public will to realize this vision.

Chairman McDermott, Ranking Member Linder and members of the Subcommittee on Income Security and Family Support, CWLA thanks you for inviting us to testify today about the important legislation passed by this Subcommittee last year, legislation that resulted in a significant new law on child welfare.

Historic Legislation

Last fall, Congress enacted and President Bush signed the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections to Success, P.L. 110-351). CWLA believes this legislation is the most significant federal child welfare legislation enacted in at least a decade—if not since the creation of Title IV-E foster care and adoption assistance in 1980.

Chairman McDermott, CWLA thanks you for your leadership last year and for your continuing interest and dedication to addressing the needs of abused and neglected children and all families that come into contact with our nation's child welfare system. Members of this subcommittee, and key leaders including former Congressman Jerry Weller, the Senate Finance Committee and the staff of this subcommittee working across house and party lines can be proud of your efforts and accomplishments in passing P.L. 110-351. This law, when fully phased in and implemented at the state and local level, will have a significant and positive impact on outcomes for children and families facing crisis. It takes a major step forward in kinship care. It will increase special-needs adoptions across the country. The new law begins the critical task of focusing on the overrepresentation of some minority populations in child welfare by providing federal funding to some kinship families and by allowing direct access to tribal governments—and, by extension, to children in Indian country. Under the law youth aging out of foster care will be better served. It also holds the promise of improving education and health care for children in care and offers the promise of moving this nation, at least in some small way, toward a sounder workforce development policy in the area of child welfare.

Background on Important Policy Changes

After many years of debate, some experimentation by states and a patchwork of financing, Congress has now given states the option to use federal Title IV-E funds for kinship guardianship payments for children raised by relative caregivers. Children eligible under this provision must also be eligible for federal foster care maintenance payments, must reside with the relative for at least six consecutive months in foster care, and it must be determined that reunification is not possible and adoption is not appropriate. It also clarifies that under current guidance, states may waive non-safety licensing standards (as determined by the state) on a case-

by-case basis in order to eliminate barriers to placing children with relatives. State agencies must exercise due diligence to identify and provide notice to all adult relatives of a child within 30 days after the child is removed from the custody of the parent(s).

A second significant policy area that is addressed in several ways is youth transitioning from foster care to independence. A year from now, states will have the option to extend care to youth age 19, 20, or 21 with continued federal support to increase their opportunities for success as they transition to adulthood. Importantly, the law also attempts to strengthen the current transition planning requirements by requiring states to engage youth more directly in planning and addressing their needs after they leave foster care. By requiring child welfare agencies and caseworkers to help youth develop a transition plan during the 90-day period immediately before a youth exits from care and directly addressing specific issues such as continued access to health care, job training, education, housing and other vital services, we can—if properly implemented—assure better outcomes for the more than 26,154¹ youth who currently “age-out” of foster care.

One of the most momentous parts of the new law will begin to take effect in a few weeks, on October 1, when tribal governments and consortia will be allowed to apply directly to HHS to operate their own Title IV-E foster care, special needs adoption, and kinship care programs. These provisions were debated and sponsored in Congress for many years and CWLA is pleased they are included in the final law. Along with the kinship care provisions, this can be an important tool to help address the challenge of overrepresentation of certain populations in our nation’s child welfare system. These changes also begin to address a long-time inequity in access and funding that tribal communities have faced for many years.

Also significantly the legislation takes one small but important step in beginning to replace the outdated eligibility requirements that now exist in Title IV-E by phasing out the eligibility link between special needs adoption children and the non-existent Aide to Families with Dependent Children (AFDC) program. This provision which also takes effect October 1, means that all children sixteen and older, children in care for five years or siblings of another eligible special needs child will no longer have their federal funding and commitment linked to whether or not that child was removed from a family that would have been eligible for AFDC as it existed on July 16, 1996. We look forward to seeing Congress completing its work in this area by also de-linking kinship and foster care eligibility in the same way. CWLA appreciates the recent action of a member of this Subcommittee, Congressman John Lewis (D-GA) for his recent introduction of H.R. 3329² which addresses this challenge and we look forward to working with him and the subcommittee on this. As part of the adoption improvements included in the Fostering Connections to Success Act, Congress also extended and increased the incentive program to encourage more adoptions of older children waiting to be adopted.

Finally, Congress enacted changes that took effect last October when the bill was signed into law, in the areas of workforce development, strengthening education and improving health care. These provisions, when fully implemented and practiced, will strengthen the child welfare workforce and improve both the health and education outcomes for children in care.

Through Fostering Connections to Success, the availability of federal training dollars to cover training of staff not only in public agencies but in private child welfare agencies and for court personnel, attorneys, guardian ad litem, and court appointed special advocates can, and we believe will, be an important tool in developing the child welfare workforce.

The health care planning requirement that state child welfare agencies work with the state Medicaid agencies and other healthcare experts to create a plan for the ongoing oversight and coordination of health care services for children in foster care can serve as a tool to address the frequently unmet health and mental health needs of children in care. If implemented effectively, we will see better health screenings; better identification of needs; greater medical information sharing; greater oversight and tracking of medication and increased continuity of care.

Education outcomes and opportunities for children in foster care will be significantly enhanced due to provisions in the new law, and with an assist from the education community. We know this was a key concern for members of this subcommittee and CWLA appreciates that leadership. There is good reason for this concern. While national data is sparse several individual studies and surveys show that half of youth emancipating from foster care will not have received a high school diploma.³

As of last October new requirements in the law are in effect and state child welfare agencies are to coordinate with local education agencies to ensure that children are able to remain in the school they are enrolled in at the time of placement into foster care, unless that would not be in the child's best interest. In that case, the state must ensure transfer and immediate enrollment in the new school. In addition, the act provides increased federal support to assist with school-related transportation costs. Finally, the state plan must ensure that every child receiving IV-E assistance is enrolled as a full-time student or has completed high school.

Positive Developments In the First Months, Further Action Required

Before the enactment of Fostering Connections to Success, various state surveys found a range of approaches to supporting these families. A recent survey by *Child Trends* determined that 49 states allow kin to pursue a legal guardianship for children in state custody while receiving some financial support. That same survey indicated that forty of these states required that reunification had to be ruled out first before support was extended and twenty-eight states reported that adoption also had to be ruled out.⁴

Although the enactment of the Foster Connections to Success Act is historic in its reach, it comes at a particularly challenging time. The nation is facing one of the most severe if not *the* most severe recession since the great depression of the 1930s. As a result, states have been enacting budget cuts that have impacted not just the core child welfare services but a cross section of programs that affect families by providing key human services. Just when families face increased stress due to layoffs, and reduced wages and incomes, community and societal efforts to cushion the blow are being curtailed.

States have, in recent years, relied on a range of federal funds to address their child welfare systems. Two of these sources are TANF (Temporary Assistance for Needy Families) and

SSBG (Social Services Block Grant) which have respectively provided nineteen percent and twelve percent of total federal funds⁵ used for child welfare as of 2006. These two block grants have also been in demand to fund other increasing human service needs in this time of strained state budgets. As a result, many states have not yet been able to adopt the options provided to them through the new law.

An additional challenge is the transition from one Administration to the next. Recent history suggests that these transitions take longer and longer after each changeover. The end result for Fostering Connections to Success has been a delay in guidance that is much needed by the states. CWLA believes that such an expansive and important reform requires an aggressive promotion and training by HHS in regard to what states can and should do in implementing the new law. CWLA, along with many child welfare and children's organization, is working to educate its membership. We find our member agencies, both public and private, eager to learn about the new law and how the policy changes encouraged by the new law can be implemented following a best practice model, but we feel nothing carries as much force as the leadership of the agencies and the Department vested with the oversight of the new law.

At the same time it's encouraging to see that some policy changes are beginning to take place. As of last week, the Children's Bureau indicated that seven states plus the District of Columbia had actually filed plan amendments to extend Title IV-E funding to kinship/subsidized guardianships. Those states are Connecticut, Maine, Missouri, Oregon, Pennsylvania, Rhode Island (which has been approved), and Tennessee. In addition, through informal surveys by organizations such as our colleagues from APhSA and through some of our own informal discussions, the states of Illinois, Michigan, Oklahoma, Massachusetts, Alaska and New Mexico have indicated some interest or preparation in moving forward with the kinship option. We would expect more states to take action both as budget debates settle and as guidance is provided in greater detail.

Initial guidance in regard to states taking the kinship care option would suggest that current kin families covered through the use of state funds and other federal funds such as TANF may not be eligible for future federal funding under the new kinship option even if the child had been Title IV-E eligible and met all the other conditions set out in the law when he or she was placed in care.⁶

We urge Congress to work with the new Administration to address the possibility that some of these current kin families would in fact be eligible for federal funding after a state has taken the guardianship option. Clarification of this and possible other issues may speed up the ability of states to assess their options and to implement this kinship provision. Some guidance may also be needed in regard to how to structure guardianship assistance payments and the process for establishing and adjusting such agreements and the relative consultation process. Since many states have used TANF funds through the child-only grant to fund kinship programs, we would hope taking the Title IV-E option would not be based solely on the financial advantages or disadvantages of choosing TANF over Title IV-E but would be based on what is in the best interest of these families and children.

An additional provision that has taken effect is section 204 of the Fostering Connections to Success Act which addresses educational stability. The law now requires that as part of the casework plans, when it is in the child's best interest, he or she remain in the same school even if that child resides in another school's district boundaries. As part of this new requirement, states are now allowed to draw-down the higher matching Title IV-E maintenance funds instead of administrative funds to help address the transportation costs of transporting a child to his or her old school. The new provisions also require that when the child must move and cannot remain in the same school district, that he or she be enrolled immediately in a new school with his or her records. This is an important new requirement in the law that we believe will take a continued effort by states to fully implement. It is unclear how well these new provisions have been implemented. Several states have indicated that they do meet the education needs of children in care. Other states have indicated to us that it can sometimes be a challenge to get the local school districts to focus on this population when schools are challenged on so many other fronts. In recent months, other states have taken some action to address state laws that may be present barriers that restrict where a child attends school.

In recent weeks states such as Pennsylvania and Missouri have taken new steps to address the education needs and rights of children in foster care. On September 9, 2009 the Missouri Department of Elementary and Secondary Education sent out instructions to school administrators based on new enacted state legislation, Senate Bill 291. This new "Foster Care Education Bill of Rights" requires school districts to designate an education liaison for children in foster care, the child has the rights outlined in the new federal act to remain in his or her new school district, and outlined options to address the cost of transportation funding for these children.⁷ In Pennsylvania, also as a result of new laws, the state issued new guidance in January 2009 that among other issues addresses previous prohibitions on children living outside school district lines from continuing to attend their same school. In this guidance the state urges local school education agencies to develop policies and agreements to address the movement of children in foster care and their need to remain in the same school districts when it is in their best interest.⁸

At this point, despite some progress, both administrative and congressional action are needed. As we have seen, the new law now places the burden on child welfare agencies. While we are supportive of such a requirement, to be truly effective an equal responsibility needs to be placed on state and local education agencies. Amending the Elementary and Secondary Education Act (No Child Left Behind Act), will highlight for educators how important it is that the needs of this population are addressed.

Second, we would urge that once the leadership has been confirmed by the Senate that both the Education Department and the Department of Health and Human Services issue joint guidance to both the state child welfare and education departments to make sure the education provisions of the new law are carried out. Again, we hear examples that some local education agencies when approached by child welfare agencies to address these new requirements are unaware of the new provisions. As our colleagues from the American Bar Association have indicated, the issues surrounding immediate enrollment, the transfer of records in a timely fashion, and the provision of needed transportation services to some foster children are complex issues but they must be addressed if we are to assure the education success of foster children. CWLA will be working

with our child welfare partners, others and hopefully members of Congress to address needed changes in the education reauthorization to close this gap.

Transition planning is another important provision that was included in the Fostering Connections Act. As of last October, states were required to have new planning requirements for young people preparing to leave foster care. The new law requires caseworkers to actively engage young people no less than ninety days before he or she leaves care in developing a plan that is both personalized and at that young person's direction. The plan must include specific options with regard to several important services such as access to health care, housing options, work force supports and educational opportunities. This is in addition to requirements around transition planning already in the law. CWLA feels it is vital that we make sure that these additional transition and planning requirements be carried out the way the law specifies, including the requirement that the young people be actively involved and direct the planning. This will take some time to both implement and measure. Ultimately if this provision is carried out the way the Subcommittee envisions—and we hope it is—it will mean we have to make sure caseworkers are trained and adequately staffed so that they will be properly working with these young people to address their varied needs.

A final element that took effect last October and will be important to see that it is effectively implemented are the requirements that we know the Chairman has had a great deal of interest in—the new health planning requirements. Similar to the transition planning, these new requirements build on what is already in law to strengthen health access and health services to children in care. It is vital that children in care be screened and that the services they need be delivered. This includes better tracking and use of medication. As your Subcommittee learned from earlier hearings, this is not always done.

As CWLA has stated before, studies indicate that between one-half and three-fourths of children entering foster care exhibit behavior or social competency problems that warrant mental health care.⁹ We are not sure how much increased and coordinated planning between state child welfare agencies and Medicaid agencies have taken place. A recent letter by the American Academy of Pediatrics (AAP) states that based on work with their individual AAP chapters, it does not appear that the new requirements of the law are being met. We would concur with many of the recommendations and suggestions in that letter regarding the kind of consultation between not just the two state agencies but also a host of key stakeholders including health care providers and other parties that effect children in child welfare.¹⁰

We urge HHS when they issue their new pre-print, which is the form that states may use to submit their five year state plan, to be more specific in its direction to states to assure that all the requirements around planning and consultation take place. This will ensure that the services outlined in the new law such as screening, monitoring of and provision of care, the tracking and use of medication and the tracking of a child's medical records are in fact being carried out and are in place in all fifty states.¹¹

Fiscal Year 2010

Two aspects of the law take place in a few weeks when the new fiscal year starts. On October 1, tribal governments and consortia will be able to apply to HHS to run their own Title IV-E foster care, kinship care and special needs adoption assistance programs drawing federal funds directly. Our understanding is that several tribes have expressed an initial interest in applying to run their own Title IV-E programs. This new law represents a historic opportunity to extend support and funding to Native American populations who for too long have not had equal access to federal funding and support. This lack of access to services and support has been a contributing factor to the overrepresentation of Indian children in the child welfare system in some parts of the country. As positive as this development is, it too will take time to be implemented properly. As we stated in our comments to HHS last May, the opportunities presented in this new law can and should encourage collaboration between three key partners: tribal governments, state child welfare agencies and the federal government, in particular the Department of Health and Human Services (HHS). As this new law is implemented and as more tribal governments take the option to establish Title IV-E Foster Care, Adoption Assistance and Kinship Guardianship programs, we urge the Department to invest the time and resources necessary to assist in the successful implementation of these new plans. Indications are that HHS recognizes this challenge.

A tribal government willing to take on the operation of a Title IV-E program must also address issues around data collection and requirements for raising local matching funds. While this may take time, we feel that positive initial steps have been taken with the increased dialogue and discussion within tribal communities as well as between state and tribal governments.

The second change in law that takes place on October 1 is the gradual de-link from the AFDC eligibility requirements for special needs adoptions. At the start of the fiscal year, all special needs adoptive children sixteen and older, or children who have been in care for five or more consecutive years, and their siblings, placed into an adoptive family where one of these children is Title IV-E eligible will all become eligible for Title IV-E funding. No longer will the eligibility for federal support be limited to children removed from a family that would have been eligible for AFDC in 1996. An important part of this phase-out is the requirement that Congress inserted that if a state experiences a savings because federal funds are extended to special needs placements not previously covered, those savings have to be reinvested into other child welfare services. We recognize the challenges this presents in the economic environment states now face but we believe that effective execution of this requirement can set up an important avenue to re-invest state dollars into prevention services as a result of the federal government taking over a fairer share of adoption funding.

We urge the new Administration to outline how this spending will be tracked so that funds now currently within the child welfare system will remain in other areas of need such as prevention services and post-adoption services.

Hopes for the Future

Although it has been nearly a year since enactment of this law, in terms of implementation, we are just beginning. We feel confident that as state budgets settle, as the new Administration fills out its policy positions and they get Senate approval, and as organizations such as ours continue

our efforts at explaining the opportunities and the best practice approaches, more states will implement changes that will move more children toward permanency and that will ultimately improve outcomes for children and youth in the child welfare system. We believe that as Tribal governments explore and learn about the potential to draw down direct funding and as a dialogue between the federal government, the states and tribes expand their initiatives, new partnerships can be built and more children living in Indian country will be better served.

There are provisions of the new law that require regulation and further guidance. We hope through guidance from Congress and by soliciting information and views from the field including the views of state and local agencies, the public, faith-based and non-profit communities and by always including the feedback and concerns of children and families most effected by these programs, we can implement all of these provisions in a way that will improve outcomes for children and families. We urge the subcommittee to continue this oversight and we hope you will be vigilant for any way that the law can be strengthened and improved in the coming months.

Next Steps

We urge the subcommittee, as the Fostering Connections to Success Act is implemented and phased in, to continue to take the next steps that the Chairman has talked about in recent months—as have the leaders of the Senate Finance Committee—about examining ways to provide greater focus and federal support for programs that can prevent child abuse and neglect from taking place. CWLA is very pleased that bipartisan legislation introduced by the Chairman, Congressman Danny Davis (D-IL) and Congressman Todd Platts (R-PA), which will expand support for proven home visiting programs, is continuing to move forward in Congress. It is an important tool that can reduce the incidents of abuse and neglect. We also hope that the next phase of reform will allow states to invest Title IV-E funds into prevention services that can demonstrate their effectiveness. There are several proposals in development that merit consideration. Last Congress, for example, the Chairman introduced HR 5466¹² which included a provision to use Title IV-E funds for programs that can reduce placements in foster care, and strengthen post reunification and post adoption services. We have been a part of a coalition of advocacy groups, the Partnership to Protect Children and Strengthen Families,¹³ which has offered another example for reinvesting Title IV-E funds. We also feel that the 2010 budget which includes some limited funding for demonstration projects that seek to reduce long term foster care can assist in the development of reforms that can begin to help reduce both the number of children entering foster care and the length of stay for those children who do have to be placed in care.

The subcommittee will also be dealing with the reauthorization of TANF. As we indicated earlier, TANF contributes nearly one-fifth of federal child welfare funding. In regard to the financial role TANF plays, many states have used the TANF block grant to invest in innovative ways to provide child welfare services that can help prevent placement into out-of-home care. We need to protect these types of investments and perhaps gather a better understanding of how these investments are made and how they supplement the system. The subcommittee will also have to examine the link between Title IV-E kinship care and the use of child only placements to make sure children in child welfare receiving kin support through these grants are being

adequately served. We need to take a careful look at this because we do not want a situation where a family is forced into child welfare just to access services. At the same time we do not want families already connected to the child welfare system to be denied services through Title IV-E. As we indicate earlier in this statement, it is important that the choice of the Title IV-E kinship option be based on what is in the best interest of the child.

There are obvious overlaps between TANF and child welfare. Some, even within the human service advocacy community, fail to recognize that many of these are the same vulnerable families and we need to examine whether or not there is adequate coordination between child welfare and TANF agencies.

Finally, CWLA feels that the reestablishment of a White House Conference on Children and Youth, similar to the Aging Conference, would be an important tool to help communities and states deal with many of these challenges from creating effective community-based prevention strategies to tackling the implementation of the Fostering Connections to Success Act. Ultimately the federal government can provide vital support and leadership—but we will truly improve outcomes for this nation’s most vulnerable children and families only if these new laws and programs are carried out down to the casework level. This is CWLA’s mission and we believe, our collective responsibility.

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FOOTNOTES

- 1 Children who age out of foster care are captured by the AFCARS emancipation data element. Children who exit care to emancipation are those who
2 reach the age of majority according to state law by virtue of age, marriage, etc. CWLA, Special AFCARS tabulation.
3 H.R. 3329, "Look-Back Elimination Act of 2009, introduced July 24, 2009. Sponsor Congressman John Lewis (D-GA).
- 4 In a national survey, 54% of former foster youth had completed high school. Cook, R. (1991). A national evaluation of title IV-E foster care
5 independent living programs for youth. Rockville, MD: Westat Inc. At 12-18 months after leaving foster care, 55% of former foster youth in
6 Wisconsin had completed high school. Courtney, M., & Piliavin, I. (1998). Foster youth transitions to adulthood: Outcomes 12 to 18 months after
7 leaving out-of-home care. Madison: University of Wisconsin
- 8 Allen, T., K.; DeVooght, K., & Geen, R. (2008). *Findings from the 2007 Casey Kinship Foster Care Policy Survey*. Washington, DC: Child Trends
9 DeVooght, K.; Allen, T.; & Geen, R. (2008). *Federal, State, and Local Spending to Address Child Abuse and Neglect in SFY 2006*. Washington, DC:
10 Child Trends
- 11 Title IV-E Plans, Kinship Guardianship Assistance Training, Fostering Connections to Success and Increasing Adoption Act of 2008. ACYF-CB-PI-08-
12 007. <http://www.cwla.org/advocacy/adoptionhr6893acfinstructions.pdf>
13 *Foster Care Education Bill of Rights*. September 9, 2009. Memorandum to School Administrators, Missouri Department of Elementary and Secondary
Education.
- 14 *Enrolment of Students*. January 22, 2009. Basic Education Circulars, Pennsylvania Department of Education. Online at:
15 <http://www.pde.state.pa.us/k12/cwp/view.asp?A=11&Q=84241>
- 16 Landsverk, J.A., Burns, B.A., Stambaugh, L.F., & Rolls Reutz, J.A. (2006). *Mental Health Care for Children and Adolescents: A Review of the
17 Literature*. [Retrieved online](#) October 22, 2007. Seattle: Casey Family Programs
- 18 American Academy of Pediatrics. August 20, 2009. *Letter to Honorable David Hansell, Acting Assistant Secretary for Children and Families*.
- 19 Title IV-E Pre-Print. (2008). OMB Request for Public Comment: State Plan for Foster care and Adoption Assistance—Title IV-E. OMB No.: 0980-0141
20 <http://www.cwla.org/advocacy/adoptionhr6893acfpreprint.pdf>
- 21 H.R. 5466, "Invest in KIDS Act, introduced February 14, 2008. Sponsor Congressman Jim McDermott (D-WA).
- 22 Partnership to Protect Children and Strengthen Families Act (2007) <http://www.cwla.org/advocacy/nurturingfamilies.pdf>