

# Judicial Guide to Implementing the Fostering Connections to Success and Increasing Adoptions Act of 2008 (PL 110-351)



**Center on  
Children and the Law**



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I hope the legal community will find this Judicial Guide helpful. Please share it with others as we all work together to effectively implement this law.

Heidi Redlich Epstein, JD, MSW  
Director of Kinship Policy  
American Bar Association Center on Children and the Law

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## Introduction

### Judicial Guide to Implementing the Fostering Connections to Success and Increasing Adoptions Act of 2008 (PL 110-351)

The Fostering Connections to Success and Increasing Adoptions Act – Public Law 110-351, (“Fostering Connections”) is a federal law primarily designed to promote permanent families for children and youth in foster care. This law encourages maintaining family connections, supporting youth transitioning from foster care, ensuring the health and educational well-being for foster youth, and providing many Native American children important federal protections and support for the first time by allowing Tribes to directly administer their local programs authorized by Title IV-E of the Social Security Act.

To enable this law to fulfill its purpose, it is critical for courts to provide judicial oversight regarding the implementation of Fostering Connections at **every** hearing and at each stage of the case. The active role of judges hearing dependency cases can make the difference between Fostering Connections being effectively implemented and states failing to comply with the law and enabling foster children to benefit from the reforms in the new law. If judges fulfill this oversight role by regularly asking questions, they create an expectation of compliance for all parties and as a result practice continues to improve, as was the intent of this new law. Finally, as a major stakeholder in the child welfare system, courts can play a role in convincing the state agencies and legislatures of the need to take advantage of the law’s optional provisions and help reinforce the need for proper implementation and training.

Many of the provisions of Fostering Connections took effect on October 7, 2008, the date of the law’s enactment, and were required to be implemented immediately. However a delay was permitted if state legislation was required for implementation. Provisions requiring immediate implementation included:

- identification and notice to relatives
- sibling placement requirement
- transition plans for youth
- educational stability and attendance
- health oversight and coordination plan, and
- adoption incentive program expansion

Other provisions have become available to states as options or take effect over time. For example, as of October 1, 2009, the phase in of additional federal adoption assistance funds began to make children with special needs eligible. For a complete list of provisions and an implementation timeline **see:** <http://www.childrensdefense.org/child-research-data-publications/data/FCSIAA-appendices.pdf>.

On July 9, 2010, the US Department of Health and Human Services, Administration for Children and Families, Children's Bureau issued a Program Instruction (hereinafter referred to as the "Program Instruction") to provide guidance on the implementation of Fostering Connections. This Program Instruction emphasizes the importance of the court's role in oversight and implementation of Fostering Connections and reinforces the best practices advocated within this document. Generally, guidance is persuasive federal authority to assist states with the implementation of law. **See:** [Program Instruction, ACYF-CB-PI-10-11](#).

In some circumstances, the requirements and options under Fostering Connections enhance and complement existing state policies and practices. In other situations, these federal requirements may necessitate changes in state policy and/or practice, including those of the courts. Therefore, it is important to consider how Fostering Connections interacts with existing laws and policies, such as the Adoption and Safe Families Act (ASFA), recognizing that a number of provisions in Fostering Connections are federal requirements that must be implemented.

This document presents a brief overview of each section of Fostering Connections, outlines some general judicial considerations for implementation and provides questions to be asked from the bench to help ensure compliance with the law and best practice. It is important to note that while the brief overviews in each section are limited to what is required under Fostering Connections and the relevant guidance issued, the judicial considerations and questions to be asked from the bench may go further in supporting best practices. The considerations and questions focus on implementation of Fostering Connections but also touch on issues that, though not required by Fostering Connections, are important for judges to consider when applying best practice principles in addition to the requirements. Keep in mind that Fostering Connections, like ASFA, amends the Social Security Act, therefore the provisions should be read in the context of that law. For the complete text of Fostering Connections **see:** [http://www.grandfamilies.org/text\\_of\\_law](http://www.grandfamilies.org/text_of_law).

## Title I: Connecting and Supporting Relative Caregivers

### Section 101: Kinship Guardianship Assistance Payments for Children

#### Overview

Fostering Connections gives states the **option** to use federal Title IV-E funds for kinship guardianship assistance payments (GAP) for Title IV-E eligible children cared for by relative foster parents committed to caring for these children permanently when they leave foster care. Prior to Fostering Connections, 38 states<sup>1</sup> and the District of Columbia had some form of subsidized guardianship supported by state or local funds, TANF or the Title XX Social Service Block Grant. Eleven states<sup>2</sup> over time had waivers from HHS allowing them to use Title IV-E funds for subsidized guardianship payments. When Fostering Connections was enacted, six of the states with waivers were still operating programs under the waiver authority, while the other five continued the program with state dollars for at least those children who had exited to guardianship under the waiver. These subsidized guardianship programs varied dramatically in size and scope. The use of federal funding for subsidized guardianship, as authorized by Fostering Connections, will help free funds previously used for state guardianship programs and will help children placed with relative foster parents achieve permanency. Judges should provide judicial leadership to get their state to pursue this option.

#### Eligibility - Children

Children eligible for the federal guardianship assistance program must be eligible for Title IV-E federal foster care maintenance payments while in the home of the relative for at least six (6) consecutive months. They must demonstrate a strong attachment to the prospective relative guardian and, if 14 and older, the child must be consulted about the kinship guardianship arrangement. Siblings of eligible children may be placed in the same home and receive support even if they themselves are not otherwise eligible. As stated in Section 206 – Sibling Placement, children should be placed with their siblings unless it is contrary to the safety or well-being of any of the siblings. Children eligible for these IV-E guardianship payments are also automatically eligible for Medicaid.

#### Eligibility - Guardians

Guardians are eligible if they are relatives who have assumed legal guardianship of the child and have demonstrated a strong commitment to care for the child permanently. They must have cared for the child for at least six (6) consecutive months as a licensed foster parent (and have undergone criminal record and child abuse registry checks). Kinship caregivers who choose not to adopt should be encouraged to pursue subsidized guardianship and not forced to adopt.

#### Case Plan Requirements

For each child with a permanency plan of guardianship and for whom the state plans to make federal kinship guardianship assistance payments, the agency must document:

<sup>1</sup>Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island (only for non-relatives), South Dakota, Tennessee, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

<sup>2</sup>Delaware, Illinois, Iowa, Maryland, Minnesota, Montana, New Mexico, North Carolina, Oregon, Tennessee, and Wisconsin.

- the steps taken to determine that return home and adoption are not appropriate options for the child,
- the reasons for any separation of siblings,
- the reasons why guardianship is in the child's best interests,
- the ways in which the child meets the eligibility requirements,
- the efforts to discuss adoption with kinship caregivers and the reasons why adoption was not chosen, understanding that the reason that kin choose not to adopt may be cultural, and
- the efforts to discuss guardianship with the child's parents or reasons why such efforts were not made.

### State Requirements

The state must amend and submit a revised state Title IV-E plan to the Administration for Children and Families, Children's Bureau, Department of Health and Human Services requesting Title IV-E funds for GAP and must provide the state and/or local dollars required to match federal dollars for the program. The kinship guardianship assistance payment rate must not exceed the foster care payment made to a foster family had the child remained in a foster family home. The state must also share, under the federal match, the total cost of nonrecurring expenses associated with obtaining legal guardianship of a child up to \$2,000.

The state must negotiate a written guardianship assistance agreement with prospective guardians. The agreement must specify the amount of payment and manner of adjustment of payment. Please note that the child maintains eligibility for adoption assistance in the event that the guardian wants to adopt the child later, if the child was eligible for such assistance when he or she exited to guardianship. Additionally the kinship guardianship agreement remains in effect even if the guardian moves to another state.

Under Fostering Connections, federal kinship guardianship assistance (GAP) payments are only available when the child and guardian meet all of the Title IV-E eligibility requirements and have entered into a guardianship assistance agreement that meets the requirements of the Federal law. To provide the greatest number of children with this important permanency option, states may operate a subsidized guardianship program, which utilizes Title IV-E, other federal, state, and/or local resources, to support both children who are eligible for IV-E GAP and those who are not.

**See:** New Help for Children Raised by Grandparents and Other Relatives at [www.grandfamilies.org](http://www.grandfamilies.org) and the Fostering Connections Kinship Toolkit at [www.fosteringconnections.org](http://www.fosteringconnections.org) for more information.

### Judicial Considerations

- How does your state define relative, if at all?
  - Does it include “fictive” kin, people who are not related by blood, marriage or adoption to the child, such as Godparents and close family friends, but have a significant relationship to the child or family?
  - Is your definition of relative consistent with the definition used for the identification and notice provisions?
  - The Program Instruction issued on July 9, 2010 gives states discretion to define “relative” as they see fit and encourages states to use the same definition for both the GAP program and the identification and notice provisions. **See** sections D and H: [Program Instruction, ACYF-CB-PI-10-11](#).
- Are lawyers available to represent relatives in your area?
  - Under Fostering Connections, the state must pay non-recurring costs required to obtain a guardianship up to \$2,000, which includes the cost of legal representation for the relative guardian.
  - Under Fostering Connections, increased resources are available to help train judges and attorneys in the event that additional legal resources are needed in your area. **See:** Section 203 - *Short-Term Training for Child Welfare Agencies, Relative Guardians and Court Personnel*
- Does the court order address the following, if applicable?
  - The case plan requirements for GAP (see below)
  - The contact/visitation plan with the parents, siblings, or other relatives - including whether the visitation is supervised, location, frequency, best interest controls
  - Clarify the rights of guardians vs. rights of parents
  - Identify a successor guardian, or need for a standby guardian if the guardian is chronically or terminally ill or require a court hearing if the guardian is no longer able to care for the child
  - Any other necessary provisions or conditions required under ASFA or state law
- Is there a clear process for considering modification of guardianship orders and the underlying assistance agreements, when necessary; i.e., change in custody or visitation terms, change in supports or services needed by the child, successor guardian?
  - This process can be documented in the form of policy, local court rules or state statute

### Questions to Ask from the Bench

- Does the case plan meet all of the requirements of Fostering Connections?
  - Why is guardianship the most appropriate option for the child?
    - What steps have been taken to determine that reunification and adoption are not appropriate options for the child?
    - Is guardianship in the child’s best interest?
  - If siblings are not going to be placed together in a guardianship, because of contrary to safety or well-being, why not, and what is the plan to keep them connected? *See Section 206 – Sibling Placement.*
    - The Program Instruction allows states to define siblings for the purposes

- of subsidized guardianship. **See:** [Program Instruction, ACYF-CB-PI-10-11](#).
- Did the child meet all eligibility requirements of GAP?
  - Is the child eligible for Title IV-E federal foster care maintenance payments?
  - Has the child been living in the home of the licensed, prospective relative guardian for at least six (6) consecutive months?
  - In what ways does the child demonstrate a strong attachment to the prospective relative guardian?
- What efforts have been made to discuss adoption with kinship caregivers and the reasons why adoption was not chosen?
- What efforts have been made to discuss guardianship with the child's parents or reasons why such efforts were not made?
- If the child is age 14 and older, how has he or she been consulted about the guardianship? What feedback did the child provide regarding guardianship, if any?
  - When appropriate, consider consulting the child in chambers or allowing the child to testify, if they would like to be heard.
  - The court should also consider consulting with younger children, in a developmentally appropriate manner.
- In what ways has the guardian demonstrated a commitment and ability to care for the child permanently?
- What is the relationship between the guardian and the parents?
- What is the visitation plan, if applicable?
  - Should the visits be supervised?
  - What is the location and frequency of the visits?
  - Should the order contain a clause that the best interest of the child ultimately determines visitation? What is the process to determine the best interests of the child?
- Who is the successor or standby guardian?
- Are there any other necessary provisions or conditions that should be specified in the court order?

## ***Section 102: Family Connection Grants***

### **Overview**

Fostering Connections authorizes a new grant program for activities designed to connect children in foster care (or at risk of entering foster care) with family. Funds can be used for the creation or expansion of:

1. Kinship navigator programs;
2. Intensive family-finding efforts to search for relatives or other important individuals in the child's life and establish family connections;
3. Family group decision making, team decision making and other similar family group conferencing meetings; or
4. Residential family substance abuse treatment programs that prevent separation or facilitate reunification while parents receive comprehensive treatment services.

The act guarantees \$15 million a year for competitive, matching grants to state, local, or tribal child welfare agencies and nonprofit organizations that have experience working with children in foster care or kinship care. \$5 million of these funds are reserved each year for grants for kinship navigator programs. New grants are expected to be solicited in 2011.

**See:** [List of FY 2009 Children's Bureau Discretionary Grant Awards](#) for a list of programs that have been funded to date.

### **Judicial Considerations**

- Are there any of these programs in your area (see link above for list)?
- If there are programs in your area, what are the eligibility requirements? How might they be helpful to families coming before you?
- Are there similar programs available to the families before you, such as through the CASA/GAL program or an agency trained by the [National Institute for Permanent Family Connectedness](#) (formerly the Center for Family Finding)?
  - Judges should be familiar with local resources and if there are none, be willing to develop them.
- If there is not a formalized program, what efforts has the agency made to locate family members, including any missing or unidentified parents, and the use of the Federal and State Parent Locator Service (**see:** Section 103: *Identification of and Notice to Relatives*)?
- If there are no programs in the area, are any local agencies or organizations planning to apply for a grant in the future?
  - Judges should be willing to inquire and lead stakeholders in grant applications.

### **Questions to Ask from the Bench**

- Were referrals made to relevant programs that could be helpful?
  - If not, should you order the agency to make a referral?

## ***Section 103: Identification of and Notice to Relatives***

### **Overview**

Within 30 days after the child is removed from his or her parents' custody, Fostering Connections **requires** state agencies to exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of a child (including any other adult relatives suggested by the parents).

The notice must:

1. specify that the child was removed from the custody of the parent(s),
2. explain the options the relative has to participate in the care and/or placement of the child, and any options that may be lost by failing to respond to the notice,

3. describe the requirements to become foster parents,
4. outline available services and supports, and
5. describe the state's kinship guardianship assistance program (GAP), if one exists.

Further, Fostering Connections makes it very clear that this notice requirement is subject only to exceptions due to family or domestic violence. The law does not allow for any other exceptions to notice.

Although Fostering Connections does not require such notice to be in writing, best practice and the Program Instruction issued by Administration for Children and Families, Children's Bureau, Department of Health and Human Services encourages the notice to be in writing, recommends early engagement of relatives for children at risk of removal and the use of multiple methods of notice to relatives.

The Act also allows the use of the Federal Parent Locator Service to obtain state and federal child support data to help child welfare agencies carry out their responsibilities. On December 29, 2010, the Office of Child Support Enforcement in the Administration on Children and Families issued a Final Rule expanding the disclosure of information in Federal and State Parent Locator Services to child welfare agencies to assist them in locating relatives of children removed from the custody of their parent(s) to identify potential placements for the child.

**See:** [Office of Child Support Enforcement Action Transmittal AT-10-12.](#)

Federal, state and local laws require child welfare agencies to keep certain information confidential. The requirement that states provide notice that a child is entering or has entered foster care supersedes and preempts those provisions. However, only the information necessary to comply with this federal requirement can be shared. The relative should simply be notified of the removal or impending removal and provided the information described above. There is no requirement to share the circumstances leading to the removal in the initial notice. If the child is placed with the relative or the relative becomes involved in the child's care, additional information may be shared as appropriate. As in most aspects of child welfare practice, a determination of what can be shared will depend upon the individual circumstances, as well as local, state and federal law.

While all state laws and policies may not yet comply with this federal requirement, this notice requirement has been in effect since October 2008. **See:** [Key Considerations for Implementing the Notice Requirement of the Fostering Connections to Success and Increasing Adoption Act](#) and the 50 state and the District of Columbia compilation of data on current state notice statutes at [www.grandfamilies.org](http://www.grandfamilies.org). **See also:** [Sample Notice Letter at http://www.childrensdefense.org/child-research-data-publications/data/sample-notice-letter.pdf](http://www.childrensdefense.org/child-research-data-publications/data/sample-notice-letter.pdf) .

### **Judicial Considerations**

- The Program Instruction stresses that the courts can play an important role in relative identification and notification.
- Beyond the federal relative identification and notice requirements, what are your state's relative notice requirements or policies?
  - Will the agency continue to proactively identify and provide notice to family members beyond the 30 day requirement, when appropriate?
  - The Program Instruction encourages engagement of relatives for children at risk

of removal as well.

- How does your state define relative for purposes of notice, if defined?
  - Is your definition of relative consistent with the definition used for your state's kinship guardianship assistance program (GAP)?
  - The Program Instruction issued on July 9, 2010 gives states discretion to define "relative" as they see fit and encourages states to use the same definition for both the GAP program and the identification and notice provisions. **See** sections D and H: [Program Instruction, ACYF-CB-PI-10-11](#).
- How is due diligence defined in your state? How can the court ensure that due diligence has been exercised?
- How are identification, location, and engagement of non-custodial parents handled?
- What documentation should the court require to show that proper due diligence was exercised in identifying and providing notice to all adult relatives?
  - How is the state documenting diligent search efforts and their outcomes, including conversations staff have with relatives about the role they can play in the child's life?
  - Has notice been written in plain language, easily understood by the general population, available in other languages, and provided with any necessary accommodations for the deaf population, or for those with visual impairments or in need of an interpreter?
  - The Program Instruction encourages the notice to be in writing.
- How does your state approach the family or domestic violence exception to notice?
  - Who will be making these family violence exception determinations (e.g., judge, attorney, the department, caseworker, etc.)?
  - What are the criteria and documentation requirements, if any, for the family or domestic violence exception?
  - How does your state take into consideration the court or state's belief that notice may be dangerous to the family or child?
    - If notice would not be in the best interest of the child due to past or current family or domestic violence; or
    - If notice would put the child or parent at risk of physical, mental, or emotional abuse.
  - Please note, the exception may be decided on a case-by-case basis, and then the state is relieved of their diligent efforts to notify those specific relatives only.
  - Federal law does not allow the state to create "other exceptions" to the notice requirement, including parental objection to notice. The only exception is family or domestic violence.
- What are the various placement options available in your jurisdiction to relatives, both informal and formal? See Section 104: *Allowing Waivers for Non-Safety Licensing Standards for Relatives*.
- Has the agency explored ways to keep the relative connected with the child if they are not a placement option?
  - This could include participation in family group decision making conferences, in the

- child's school or extracurricular activities, or providing a home for holidays or weekend visits.
- Continue notifying relatives for all hearings after the initial and jurisdictional/dispositional hearings.

### **Questions to Ask from the Bench**

- Which relatives have been identified? Have they all been notified? If not, why not?
- How has the agency exercised "due diligence" to identify and notify all relatives (ask at the first hearing and all subsequent hearings, when appropriate)?
  - Has the agency used a combination of good casework and technological resources?
  - Have both paternal and maternal relatives been identified and notified?
  - Has the agency asked the child to identify who is important in his or her life?
- Ask parents and the child, in a developmentally appropriate manner, to identify relatives and possible placement and family resources. Judges should speak directly to parents on the record about:
  - What efforts have been made to ensure that parent/s understand the possible benefits to the child if the child is placed with people he or she knows and of continued contact (even if not placed) with people who are important to him or her?
  - What efforts have been made to ensure that parent(s) know that their child/ren may be placed with people they don't know if the agency cannot locate a suitable relative placement?
- Which relatives have come forward as resources for the child? How would they like to be involved?
- What is the agency doing to follow up on each of these relative resources?
- Is the agency making plans to license the relative/s that are seeking placement?
  - If relatives who have been identified don't qualify for licensing, has the agency considered licensing waivers?
- Has the child been asked what his/her placement preference is?
- Are there family or domestic violence issues that warrant making an exception to the identification and notice requirements?
- What efforts have been made to ensure that the relative understands the various placement options available to them?
  - What efforts have been made to ensure they understand the options that may be lost by failing to respond to the notice?
  - What efforts have been made to ensure the relative caregivers **and** the family (parents and child) understand the role of the relative in the process?
  - How were family members made aware of ways that they may stay connected with the child and engaged in the child's case, even if they are not a viable placement option for the child?
- What efforts have been made to ensure that relatives understand the support and services available to them under the various placement options?
- Have the efforts to identify and notify relatives been documented in the court reports?

## ***Section 104: Allowing Waivers for Non-Safety Licensing Standards for Relatives***

### **Overview**

Fostering Connections **allows** states to waive non-safety licensing standards for relatives on a case-by-case basis in order to eliminate barriers to placing children safely with relatives in licensed foster homes. These standards may include requirements such as mandatory square footage and minimum numbers of bedrooms or bathrooms per person. It also required HHS to submit a report to Congress by October 7, 2010 that examines state licensing standards, states' use of case-by-case waivers, and the effect of these waivers on children in foster care. The report must also review the reasons relative foster family homes may not be able to be licensed, and must recommend administrative or legislative actions to allow more children to be safely placed in relative foster homes and be eligible for federal support. As of the writing of this document, the report has not been made publicly available.

Generally, when a child is placed in the custody of a state's child welfare agency, that child must be placed in some form of licensed foster home to receive federal reimbursement under Title IV-E. Licensing requirements and terminology differ from state to state. States have discretion to establish licensing standards and define which standards are considered safety related and which are non-safety related. For a 50 state and the District of Columbia compilation of data on current state waiver laws and policies, please visit [www.grandfamilies.org](http://www.grandfamilies.org). See also [Relative Foster Care Licensing Waivers in the States: Policies and Possibilities](#) for an overview of current waiver policies in the states.

### **Judicial Considerations**

- What are your state's licensing requirements?
  - Please note that licensing policy may be found in statute, administrative codes and policies.
- What is your state's policy on waivers of licensing requirements?
- What is the state's philosophy and practice regarding licensing relatives as foster parents?
  - Does policy differ from actual practice? If so, how?
- Which licensing standards are considered safety-related? Non safety-related?
- What are the common reasons why relatives are not licensed?
  - What assistance is available to help relatives who are denied licensing?
- Are waivers applied equitably?
  - What is the procedure for decision making regarding waivers?

### **Questions to Ask from the Bench**

- Have relatives come forward and/or been identified as placement resources for this child? Have they been licensed?
- What barriers, if any, are there to licensing a relative placement for this child?
- Have waivers been considered in this case to enable safe placement with a relative? If not, why not?
- Does the relative need assistance in advocating for placement?

## Title II: Improving Outcomes for Children in Foster Care

### Section 201: State Option for Children after Attaining Age 18

#### Overview

Prior to Fostering Connections a number of states provided some measure of services and supports to young adults in foster care beyond age 18 using state or local dollars or Federal dollars provided to states under the Chafee Program. Under Fostering Connections, states have the **option** to elect to provide federal Title IV-E support for eligible youth and young adults in foster care and those who exit to adoption or guardianship at age 16 or older up to 19, 20, or 21 years old provided the youth/young adult is:

1. Completing high school or its equivalent;
2. Enrolled in post-secondary or vocational training;
3. Participating in a program to promote or remove barriers to employment;
4. Employed 80 hours/month; or
5. Incapable of doing any of the activities described in 1 through 4 due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

Judges should provide judicial leadership to get their state to opt in. If a state decides to extend foster care for young adults beyond age 18 as part of their Title IV-E state plan, all of the requirements and protections of Title IV-E apply to these young adults in foster care, including court oversight. This includes ASFA requirements such as holding a permanency review hearing at least once every 12 months conducted by a court. Also required every 12 months is a judicial finding, reflected in the court order, pertaining to whether the agency made reasonable efforts to finalize the permanency goal. In addition, under ASFA the youth or young adult's case plan must be reviewed by a court or administrative body at least once every six months.

Additionally, effective October 1, 2010, for youth who have attained 18 years of age "a supervised setting in which the individual is living independently" will also be considered a Title IV-E eligible placement. A title IV-E agency has the discretion to develop a range of supervised independent living settings. For example, supervised settings may include host homes, college dormitories, shared housing, semi-supervised apartments, supervised apartments or another housing arrangement when paired with a supervising agency or supervising worker. **See:** [Program Instruction, ACYF-CB-PI-10-11](#) for examples of a supervised setting.

As previously stated, prior to Fostering Connections, some states were already using state and local funds as well as some federal funds provided to states under the Chafee Program to extend support past the age of majority for young adults in foster care or those eligible for adoption assistance or subsidized guardianship assistance payments. There is nothing in Fostering Connections that prohibits states from continuing these programs and using their own funds to extend assistance for those youth/young adults who are not Title IV-E eligible and cannot qualify for continued federal assistance. However, states that currently allow youth to

stay in care past age 18 and now extend care under Fostering Connections may see cost savings because of the availability of federal Title IV-E funds, which used to stop when the child reached age 18.

Under Fostering Connections, federal support for young adults beyond age 18 is only available when the young adult is participating in one of the activities listed above and is otherwise IV-E eligible. To provide more young adults with support, some states may continue or begin to provide support for young adults age 18 or older who are not IV-E eligible, or do not qualify for another reason under the federal requirements through a state or locally funded program or for Chafee Program activities. For states that extend support and services under Fostering Connections, it is important to be aware of the differences between services and supports available, if any, as well as the differing eligibility requirements of any state programs including Chafee or aftercare support.

**See:** [Sample State Legislation to Extend Foster Care, Adoption and Guardianship Protections, Services and Payments to Young Adults Age 18 and Older.](#)

### **Judicial Considerations**

- Has your state taken the option to extend care beyond age 18?
- Are young adults continuing to benefit from all protections they are entitled to under Title IV-E?
- Are federally required hearings being held for all children in foster care including those over 18?
  - Court jurisdiction must be extended past the age of majority and some states may need to amend state law to allow this.
- Is the court making the required judicial determinations of the agency's reasonable efforts to finalize a permanency plan?
  - Are reasonable efforts being made toward the youth's permanency plan?
  - Is the court checking that when APPLA is chosen as a permanency plan that *compelling reasons* are documented as to why each of the other preferred permanency plans are not appropriate for the individual youth?
  - Do these reasonable efforts for youth with permanency plans of APPLA, based on a documented *compelling* reason, include activities outlined in a youth's transition plan and/or case plan?
    - For more information, see below - Section 202: *Transition Plan for Children Aging out of Foster Care.*
  - Do these reasonable efforts contain planning for a successful transition to adulthood which includes efforts to establish permanent adult connections and permanency?
- Is the youth present and meaningfully engaged in all court proceedings and encouraged to participate?
  - Is the judge consulting with the youth in an age appropriate manner as required by law?
    - 42 U.S.C. § 675(5)(C) requires that "procedural safeguards are to be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from

- foster care to independent living, the court consults, in an age appropriate manner, with the child regarding the proposed permanency or transition plan for the child.”
- Fostering Connections requires that youth play an active role in planning for their present and future. See the next section of Fostering Connections, 202 - *Transition Plan for Children Aging Out of Foster Care*.
  - Did the youth help develop and is in agreement with their own case plan?
  - Is the youth notified and present at court hearings?
    - Court orders should document if the youth is present or not and if not, why not and what assistance, such as transportation, should be provided by stakeholder parties to enable future attendance if the youth so desires.
    - Timing of hearings should not conflict with the youth’s school schedule.
    - Final hearings should not occur without the youth present.
  - Are hearings held under conditions that facilitate and support active and meaningful engagement of the youth in key decisions?
    - Are questions addressed directly to the youth/young adult to encourage his/her participation?
    - Do hearings provide ample time and opportunity for the youth to discuss his/her transition and permanency plan?
    - Are case plans developed jointly with the youth/young adult and does this planning include discussions that reflect agreements made between the agency and the youth/young adult to obtain independent living skills and the benchmarks that indicate a successful transition?
  - What rights do young adults who have attained 18 years of age have as compared to youth in care younger than 18? In particular, are young adults represented in court by a client-directed attorney?
  - What are the processes by which care and jurisdiction of young adults in care beyond age 18 may be terminated?
    - What is the process if the young adult wishes to exit care?
    - In what circumstances can the state terminate care and jurisdiction?
    - Under what circumstances can a youth re-enter care after age 18 and what is the process for trial independence or re-entry under each?
    - What information has been provided to the youth regarding any services and supports that may be available as well as any opportunities that exist to re-enter care?
  - Where appropriate, the court should consider holding additional hearings or (if possible) extending care until the court is satisfied that:
    - The youth has been adequately notified of the opportunity to remain in care or receive other services and supports;
    - The youth is knowingly consenting to the termination of the case; and
    - The agency and youth have made progress towards the goals of the transition plan (See Section 202) and that adequate supports and services are in place to

- assure the youth/young adult's successful transition to adulthood.
- For states that have extended care beyond age 18, do all youth have legal representation? Is that attorney acting as a client-directed counsel as opposed to a best interest attorney?

### **Questions to Ask from the Bench**

- Ask the agency:
  - Is the youth/young adult present? If not, why not? How and when was the youth/young adult notified of the hearing?
  - How has the youth/young adult been made aware of the state's policies regarding extended care, if applicable?
  - How has the youth been made aware of the services available, if applicable, if he or she remains in care versus the services if he or she chooses to exit care?
  - What specific services and supports has the youth/young adult been offered?
  - If the young adult plans to remain in care, what are the plans for ensuring the young adult remains eligible for continued care?
  - What steps have been taken to ensure that the youth understands the consequences if they choose to exit care and understands the process, if applicable, for returning to care?
    - What services and supports does the young adult remain eligible for if he or she chooses to leave care?
    - What services and supports will the youth/young adult lose if he or she chooses to leave care?
    - If applicable, what is the process and timeframe for re-entering care?
  - What are your plans for ensuring permanency?
- Ask the youth/young adult:
  - How were you prepared for this court hearing? By whom?
    - Do you have a lawyer? Have you seen him or her?
  - How were you actively engaged in developing your transition plan? (See Section 202).
  - What is the state's proposed permanency plan for you? Do you agree with this plan? If not, what is your desired permanency plan and why?
  - If the state extends care beyond age 18:
    - Do you understand that you have the option to continue receiving services and support after you turn 18? What are your plans?
    - Do you understand the consequences if you choose to exit care as well as any services and supports that may be available to you?
    - What information has been provided to you regarding any opportunities that exist to re-enter care?
    - If the young adult plans to remain in care, what are your plans to participate in one of the required activities? Will you be going to school? Working? Participating in a job training or treatment program?

## Section 204: Educational Stability

### Overview

Federal law has long required that a child be placed within reasonable proximity of the child's home and that proximity to the child's school be considered when making all placement decisions. Fostering Connections took the additional step to **require** that both proximity and appropriateness of the educational setting be considered when making all placement decisions. Fostering Connections also **requires** child welfare agencies to coordinate with local education agencies to *ensure* that children remain in the same school at the time of placement, unless it would *not* be in their best interest to remain in the same school. If it is *not* in the child's best interest to remain in the school at the time of placement, the state must *ensure* immediate enrollment in a new school with all of the educational records of the child provided to that new school.

Fostering Connections also allows for some federal reimbursement for Title IV-E eligible school-age children for the cost of reasonable transportation so the child can remain in the school in which he or she is enrolled at the time of placement under the definition of foster care maintenance payment. States were previously (and continue to be) able to receive some federal reimbursement for school transportation, as well as transportation for parents, foster parents, or children to school meetings or extracurricular events, as an administrative cost.

Finally, states are now **required** under Fostering Connections to ensure all Title IV-E eligible children in foster care, or receiving kinship guardianship or adoption assistance payments, are full-time students or have completed secondary school.

### Judicial Considerations

- The Program Instruction clearly emphasizes the courts important role in educational stability.
- Is the court asking about educational stability, as part of each child's individual child welfare case plan, at the initial removal hearing, and at other subsequent permanency review hearings?
  - Is the court specifically asking questions to address:
    - educational stability for the child;
    - how to keep the child in his or her current school;
    - who will provide transportation to help the child remain in that school, if necessary?
  - Is the court making a best interest determination, ensuring the child is immediately enrolling in a new school, if not in his or her best interest to remain in his or her previous school, and monitoring the child's ongoing educational progress?

- Is the court considering the rights afforded children in foster care under the federal McKinney-Vento Act; the overlap between McKinney-Vento and Fostering Connections; and the different obligations of the education and child welfare agencies?
  - Interagency collaboration between McKinney-Vento State Coordinators, local Offices of Education, local school liaisons and the child welfare system is critical to effective implementation of both laws.
  - **See:** Legal Center for Foster Care and Education fact sheet on the overlap of these two laws - [How Fostering Connections and McKinney-Vento Can Support School Success for all Children in Out-of-Home Care](#)
- Is the court monitoring a child's ongoing school attendance and participation, especially in light of the new requirement that state child welfare agencies must include an assurance in their Title IV-E State Plan that all Title IV-E eligible children in foster care (of minimum compulsory school age) are enrolled in and attending school?
  - Courts should require child welfare agencies, and other appropriate parties to a case, to report on the child's ongoing school attendance and participation.
  - Courts should also consider working with the child welfare and education agencies to develop a system to share information to ensure and track school enrollment and attendance, as well as other critical data to evaluate student's stability, continuity and educational progress.
- Is the court taking a leadership role in ensuring collaboration between the state education agency, child welfare agency, local school districts and possibly other systems?
  - Judicial leadership around this issue is critical, and judges play a key role as conveners of multiple systems, in a broader context of system reform.
  - Consider adding education issues to the scope of an existing, or forming a new, interagency workgroup or committee and strategize how child welfare, education and other systems can effectively collaborate to ensure school stability and continuity and increase graduation rates and/or high school completion.
  - Consider having that interagency group develop policies, protocols or agreements outlining the agreed upon process for making best interest determinations (including factors to consider and individuals to involve), expedited enrollment procedures, record transfer processes, and identifying education decisionmakers.
  - School districts are generally willing to help when collaboratives are formed. Grant opportunities often have a better chance with multiple stakeholders.
- The court's specific authority over the education agency may vary by state or jurisdiction, and impact whether the court can order the education agency to comply.
  - Regardless of the court's authority over the schools, in *all* cases judges can grant motions by parties to the case to request that the education agency or local school district representative appear to respond to questions or provide information to the court.

## ***Section 202: Transition Plan for Children Aging out of Foster Care***

### **Overview**

Fostering Connections **requires** a personal transition plan for youth/young adults be in place within 90 days prior to their 18<sup>th</sup> birthday or whatever later age as the state may elect under section 201 of Fostering Connections. This does not replace the previously required independent living plan “for youth ages 16 and older” under ASFA at 42 U.S.C. § 675 (1)(D) or the case review documentation for youth age 16 and above of “the services needed to assist the child to make the transition from foster care to independent living” at 42 U.S.C. § 675(5). Instead, this plan complements these plans.

Further, the transition plan is not the same as the ASFA permanency plan, which focuses on the permanency goal and efforts being made to achieve permanency. The transition plan is a more detailed plan about the youth/young adult’s future goals and objectives. It is important to also note that this newly required transition plan does not preclude the state from beginning transition and life planning discussions at an earlier age rather than waiting until three months before the age of 18; indeed such early planning is preferable and required as part of the ASFA independent living plan. The transition plan serves as a final check to ensure that the youth/young adult is prepared for the transition to adulthood.

Finally, the plan must be as detailed as the youth/young adult chooses and include specific plans for housing, health insurance, education, local opportunities for mentoring, continuing support services, health care power of attorney or proxy, work force supports, and employment services. If the youth has special health, behavioral health or intellectual needs, the child welfare agency should assist the youth in engaging needed adult-service systems to ensure that appropriate linkages are made in terms of provision of services and benefits. An agency caseworker, and, as appropriate, other appropriate representatives of the youth/young adult, including, but not limited to, the youth’s attorney, CASA, and/or mentor, must provide the youth/young adult with assistance and support in developing the transition plan.

### **Judicial Considerations**

- The Program Instruction clearly emphasizes that the courts can play an important role in monitoring the development of the transition plan.
- The transition plan should build on the independent living plan developed by at least age 16.
- Although not specifically required by Fostering Connections, it is recommended practice that the court hold a hearing with the youth present after completion of the transition plan or at least 90 days before the youth’s/young adult’s exit from care to:
  - assure that the youth/young adult participated fully in the development of the transition plan; and
  - ensure that the services and supports identified in the transition plan are available and adequate to assure the young adult’s successful transition to

adulthood.

- Questions regarding the transition plan should also be directed to both the staff of the agency, to the youth/young adult and his or her counsel.
- Where appropriate, the court should consider holding additional hearings or (if possible) extending care until the court is satisfied that progress towards the goals of the transition plan is sufficient and that adequate supports and services are in place to assure the youth/young adult's successful transition to adulthood.

### **Questions to Ask from the Bench**

#### **Ask the agency:**

- When did the independent living planning and transition planning begin?
- How was the youth/young adult involved in the development of the plan? If he or she was not involved, why not? How will he or she participate in transition planning in the future?
- Does the youth/young adult qualify, starting in 2014, for the extension of Medicaid coverage to age 26 for all youth who were in foster care on their 18<sup>th</sup> birthday (or a higher age) and have aged out (under the Patient Protection and Affordable Care Act - P.L. 111-148)?
  - Note: under previous law, states could extend coverage to age 21 at their option.
- Has the youth/young adult received comprehensive sexual education, counseling and health care to prevent unintended pregnancy and sexually transmitted infections?
- If the youth/young adult is pregnant or parenting, what appropriate housing, medical, child care, and educational services are in place to help the youth care for the child?
- What behavioral health, mental health, developmental health, reproductive health services, drug/alcohol or medical services are in place for the young adult if continued services are needed?
  - Is the youth/young adult taking any prescription medication, and if so, what is the transition plan for this?
- If the youth is not able to make his or her health care and other legal decisions as an adult due to an intellectual or other disability, have legal proceedings been initiated to ensure that a legal decision-maker is in place?
  - Does a new attorney or GAL need to be appointed?
- What supports are in place to assist the youth/young adult with continued educational success in high school, post-secondary education (college) or vocational training?
- What services has the young adult received to prepare for and apply to post-secondary education or training, including assistance with financial aid applications?

#### **Ask the youth/young adult:**

- Were you consulted and how were you able to meaningfully participate in the development of your transition plan?
- Do you believe that your transition plan will support your successful transition to adulthood?
  - Is there anything you think needs to be added to your plan to assist you better?
  - What do you like most about your transition plan? What do you like least?

- Do you feel you are able to obtain, understand, and act on health information and make appropriate health decisions (health literacy)?
  - Who are your current doctors and dentist?
  - Do you know whether you can continue with these doctors and dentists after foster care terminates? If not, do you have a plan for accessing health care?
- Do you have an understanding about the importance of having a health care power of attorney or health care proxy to make health care decisions on your behalf if you are unable to do so?
  - Who, if anyone, at the agency has talked to you about this?
  - Have you identified a person to be your health care proxy?
- What do you know about the process for reapplying for Medicaid, if necessary?
  - Can you identify a supportive adult to help you with this process?
- Where are you going to live when you leave foster care?
  - Where do you live now? Are you going to live there after your case closes?
  - If not, where are you going to live?
  - Do you have information and have a general understanding of landlord/tenant rights? Do you know where to go to get that information if you need it?
- What else do you think you need to assist you in transitioning to adulthood and out of foster care?

Ask either the agency or the youth/young adult (preferably engage the youth/young adult):

- Who are his or her permanent connections? Who are the stable adults the young adult is able to identify as resources he or she can rely on for advice and in emergencies?
- What is the plan for the youth/young adult to remain connected to siblings and other relatives?
- What is the source of current and future income including job, training, educational program, disability benefits, etc. after the case closes? If the youth is working, where is he or she working?
- What is the youth's/young adult's current educational status?
  - What is the youth/young adult's plan for post-secondary education or training?
  - What supports are in place to assist the youth/young adult with continued educational success?
- What assistance has the youth/young adult received to prepare for and apply to post-secondary education or training, including assistance with financial aid applications?
  - Has the youth/young adult accessed Chafee services and Education and Training Vouchers (ETVs)?
  - Is the youth/young adult eligible for other scholarships or financial assistance programs targeted at youth in foster care including available state tuition assistance programs?
- Does the youth/young adult have a medical home or a regular medical care provider?
- Does the youth/young adult have access to his or her medical records or health passport, if one has been kept?
- Does the youth/young adult have a dental home or a regular dental care provider?
- What will be the source of their future health insurance coverage?

- Does the youth/young adult have the legal documents that he/she needs, such as birth certificate, social security card, driver's license or state ID, Special Immigration Juvenile Status, if appropriate?
- Does the youth/young adult have an understanding of the basic governmental, community and housing services available to him or her after the case closes?
- How will the youth/young adult secure appropriate housing, so that he or she does not become homeless?
- What aftercare services will be provided by the state?
- What else does the youth need assistance with?

### ***Section 203: Short-Term Training for Child Welfare Agencies, Relative Guardians and Court Personnel***

#### **Overview**

Fostering Connections recognizes and supports the importance of well-trained stakeholders to a child's permanency, safety, and well-being by making Title IV-E training dollars available to cover training of staff of public agencies, as well as judges, court personnel, attorneys, GAL, CASA and staff of private agencies serving children and families. Title IV-E training dollars can also be used to train prospective relative guardians in addition to foster and adoptive parents. Funding for this new training will be phased in over 5 years, up to 75% federal reimbursement in FY 2013. The federal government will pay 65% in FY2011 and 70% in FY 2012.

#### **Judicial Considerations**

- Has the court identified any specific training needs and necessary resource materials for the education and training of dependency system professionals?
- Has the court developed or contracted for training curricula and/or collaborated on providing training for lawyers, volunteer GAL/CASAs, court personnel, relative caregivers and private agency staff?
  - Has the court conducted any such training?
- Has the court encouraged cross training between the judiciary and other professionals?
- How has the state planned for the use of training dollars for these training purposes?
  - Can the training dollars be combined with other resources, such as Court Improvement Project funding, or other court training projects and initiatives, such as Model Courts project, to develop needed or more comprehensive trainings?
  - Please note, in order to claim these Title IV-E Funds, courts should enter an inter-agency agreement with the state child welfare agency to recognize training expenses by the court for allowable training.
- Has the state child welfare agency amended its Public Assistance Cost Allocation Plan (PACAP), if deemed necessary, to indicate that it will be expanding its IV-E short term training plan to include these additional categories of trainees as allowed under Fostering Connections? **See:** [ACYF-CB-PI-10-07](#)

### Questions to Ask from the Bench

- Is the child enrolled in and regularly attending school?
  - If not, order a party to the case to immediately enroll the child.
- Is the school the child is attending appropriate to meet the child's education needs?
  - If not, appoint someone to immediately advocate for assessments or appropriate services for the child.
- When a change in living placement is occurring, has the proximity to the child's current school been considered when identifying the new living placement?
  - If not, order the agency to consider and document proximity to school.
- When a change in living placement has occurred, did the child stay in the same school?
  - Was it determined to not be in his or her best interest to stay? If not, why not?
  - Are there efforts being made to either keep him or her in the same school or return him or her to that school?
  - What are the barriers to making that happen, if any?
- Has transportation been arranged and provided? If the child is placed outside of the school district's boundaries, is the child welfare agency taking ultimate responsibility to ensure needed transportation is provided (either alone or in collaboration with the education agency)?
- If it is not in the child's best interest to stay in the same school, why not and who made that determination? Are all parties in agreement? Was the youth's perspective included in the decision?
- Was the child immediately enrolled in new school, if not in his/her best interest to stay?
  - Have his/her records been transferred? How quickly were the records transferred?
  - If not enrolled immediately or records not transferred, order an individual to take immediate action.
  - Who has spoken to the school about the trauma that the child may be experiencing by separation from his/her family?
- Does anything else need to be ordered to ensure school stability for this child?
- Has the parent consented to the release of the child's education records to the child welfare agency and other advocates in the case?
  - Does the court need to issue an order to allow the school to release these records to any necessary individuals including the child's attorney or GAL and the child welfare agency?
  - **See:** [Mythbusting: Breaking Down Confidentiality and Decision-Making Barriers to Meet the Education Needs of Children in Foster Care](#) or [Q & A: Information Sharing to Improve Educational Outcomes for Children in Out-of-Home Care](#)
- Is there a specific individual identified who will take the lead to ensure school stability and all necessary education services and supports (including ensuring credit calculations and graduation requirements are addressed), or does someone need to be identified?
- Who is the child's education decision maker for general and/or special education?
  - If no one is identified, does one need to be identified or appointed?
  - Are all IEPs and 504 plans current?
  - For more information about the role of the judge in making special education decisionmaker appointments, **see:** [Special Education Decision Making: Role of the Judge.](#)

## Section 205: Health Coordination and Oversight Plan

### Overview

Fostering Connections **requires** states to develop a state plan for the ongoing oversight and coordination of health care services for all children in foster care. The health plan must be developed in coordination and collaboration with the state Medicaid agency and in consultation with pediatricians and other experts in health care and child welfare. The plan must ensure a coordinated strategy to identify and respond to the physical, mental, reproductive health and dental health needs of all children in foster care.

Specifically, the plan must:

1. provide a schedule for initial and follow-up health screenings,
2. describe how identified health needs will be monitored and treated,
3. describe how medical information will be updated and appropriately shared with providers,
4. detail the steps that are or will be taken to ensure continuity of health care services, including the possibility of establishing a medical home for every child in care,
5. include what will be done to ensure ongoing oversight of prescription medications, including psychotropic drugs, and
6. describe how the state actively consults with and involves appropriate professionals in the assessment and provision of appropriate medical care for children in foster care.

**See:** the American Academy of Pediatrics' Bright Futures guidelines at [www.brightfutures.aap.org](http://www.brightfutures.aap.org), generally regarded as the standard for evidence-based pediatric services; the tools and resources available from AAP's Healthy Foster Care America at <http://www.aap.org/fostercare/>; the [Healthy Beginnings, Healthy Futures: A Judge's Guide](#) and [Health for Teens in Care: A Judge's Guide](#).

### Judicial Considerations

- The Program Instruction states that the courts can play an important role in health oversight and coordination.
- The state-coordinated health care plan should include the 6 bullets listed above with emphasis on:
  - Proper physical, mental, reproductive health and dental health services for every child,
  - Initial and follow - up health screenings for every child,
  - Coordination and continuity of medical care for every child, and
  - Ongoing oversight of prescription and psychotropic medications.
- Courts can act as powerful and effective conveners of multiple systems to communicate, coordinate, and collaborate with regard to the health plan.

### **Questions to Ask from the Bench**

- Although the health plan is not required by Fostering Connections to be done on an individual level for each child, the court should inquire how the child's health care needs are being coordinated.
  - Who is the point of contact for questions and problem-solving?
  - If necessary, a judge can request a meeting to coordinate the provision of health services or order the provision of specific services related to a child's physical, dental, reproductive health or mental health.
- What steps have been taken to ensure continuity of health care services, including establishment of a medical home for the child?
  - What are the barriers to establishing a medical home?
  - Does the child have a dental home?
  - Does the child receive routine dental care services?
- Has the child received all necessary health screens and assessments? If so, when?
- Has the child received a comprehensive physical assessment? If so, when?
- Has the child received developmental, mental health, and substance use screenings? If so, when?
- What issues or problems were identified in these screening and assessments, if any? How will these issues or problems be addressed?
- Is the child receiving all evidence-informed preventive health services and screenings (based on the age of the child), including oral and vision care, reproductive health, and HPV vaccinations?
- Are the child's immunizations up to date?
- Does the child have a health passport?
  - Is all medical information regularly updated and shared with appropriate providers?
- Have there been regular assessments of prescription medication, including psychotropic drugs?
- How often does the child see a doctor and what is the overall quality of the health care the child is receiving?
  - How is that quality being assessed?
  - Does the child like his or her doctor? Why or why not? (Ask the child if present)
- Is the child receiving age-appropriate reproductive health information and services?
- Has the agency complied with the health care plan? If not, what action will be taken to correct the compliance problem and what is the timeframe to reaching compliance?

## ***Section 206: Sibling Placement***

### **Overview**

Fostering Connections helps promote permanent family connections for children by **requiring** states to make reasonable efforts to place siblings in the same foster, kinship, or adoptive homes, unless contrary to the safety or well-being of any of the siblings. If siblings are not

placed together, the state must document why and make reasonable efforts to provide frequent visitation or other ongoing interaction between the siblings, unless this interaction would be contrary to a sibling's safety or well-being.

### **Judicial Considerations**

- The Program Instruction clearly emphasizes that the courts can play an important role in sibling placement and sibling visitation.
- How does your state define sibling?
  - The Program Instruction allows states to define siblings.
- Does your state agency encourage the maintenance of relationships with siblings not in care? How?
- How is the court encouraging participation in hearings to discuss sibling issues?
- Is a periodic review being conducted to determine whether there has been a change in circumstances that would allow siblings to be placed together?
  - The Program Instruction encourages periodic assessment of placement and visitation.
- Are sibling visits dependent on parental visits?
  - If so the court should require a separate visitation plan for siblings which is not dependent on parental visits.
- Does your state actively recruit resource parents who are willing to take in sibling groups with children of varying ages?
- How is “contrary to the safety or well-being” of siblings being defined? Who should make such determinations?
  - Children should not be separated unless a court finds that placement together is contrary to a sibling's safety and well-being.

### **Questions to Ask from the Bench**

- Does this child have siblings?
- Does the agency know the location of all siblings?
- Are the siblings placed together?
- Has the agency or court consulted with the child and determined the child's wishes with regard to sibling placement and visitation?
- If a child is not placed with siblings, why are they separated?
  - What is the necessary documentation of reasons for separation?
  - What is the agency's plan for finding a placement that would allow the siblings to be placed together?
  - Have the circumstances changed that would allow for placement with siblings?
- What “reasonable efforts” were made to keep siblings together, and if so what were they?
  - Reasonable efforts may include referrals to family group decision making and family finding or targeted foster parent recruitment to locate sibling friendly placements.

- Have you explored opportunities for non-safety waivers for any relative resource parents? (e.g., a waiver may be available if siblings need to share a bedroom in a relative's home).
- Have you talked with the foster parents about the benefits of placing siblings together?
- If the siblings are not placed together, what is the plan for frequent visitation or other ongoing interaction between the siblings?
  - How often are the siblings seeing each other? The HHS Program Instruction to states suggests that frequent visitation is defined as at least monthly.
  - Is there a plan for siblings to see each other for holidays, birthdays, school vacations and over the summer?
  - Has the agency complied with the visitation plan? If not, why not and how will it be corrected?
  - Can they also talk to each other on the phone as often as possible? Can they email each other in addition?
  - What other opportunities can be provided to keep them close with one another?
  - Are sibling visits dependent on parental visits?
    - Sibling visits should not be dependent on parental visits.

### **Title III: Tribal Foster Care and Adoption Access**

#### **Section 301: Equitable Access for Foster Care and Adoption Services for Indian Children in Tribal Areas**

#### **Section 302: Technical Assistance and Implementation**

##### **Overview – Section 301**

Until passage of Fostering Connections, Indian tribes did not have the option of accessing Title IV-E funds directly in order to administer their own foster care or adoption assistance programs. In the past Tribes have had to enter into state tribal agreements with state Title IV-E programs and comply with all state and federal requirements in order to obtain Title IV-E funds for children in tribal care. Fewer than 100 tribes have had access to Title IV-E funds through such agreements. Further, the Title IV-E agency is expected to negotiate these agreements in good faith with all parties given the opportunity to contribute to the agreement. Under Fostering Connections, tribes may now directly access Title IV-E funds for local tribal foster care, guardianship assistance and adoption assistance programs.

Fostering Connections **encourages** tribal-state collaboration and allows states and tribes to continue to operate or create Tribal/State agreements to administer the IV-E program and, for the first time, allows tribes or tribal consortia to directly access funds from the federal government and administer the Title IV-E funds for children in the tribe's care. Tribes who directly contract with the federal government for Title IV-E funds will have to set up their own programs, standards, rules, and policies that will have to be consistent with federal requirements. These tribal programs and policies will permit tribes more flexibility on important

cultural issues, such as: licensing standards for foster families, how to define “aggravated circumstances” and “compelling reasons”, not including termination of parental rights as a dependency outcome, and the use of permanent and subsidized guardianships as a permanency outcome rather than adoption. Fostering Connections also allows tribes to access a portion of the state’s Chafee Foster Care Independence Program (CFCIP) funds and requires the tribe to provide independent living services for tribal youth in the state.

Additionally, *nunc pro tunc* tribal court orders to document reasonable efforts and contrary to the welfare findings are allowed, if previous orders did not include these findings, These orders are allowed for the first 12 months that a tribe, tribal organization or tribal consortium operates a IV-E funded program under this Act in order to access Title IV-E funding for children who are already placed in care.

### **Overview – Section 302**

To support this initiative, Fostering Connections **requires** the Secretary of the Department of Health and Human Services to provide technical assistance and implementation services dedicated to improving services and permanency outcomes for Native American children. One time grants of up to \$300,000 will be available to tribes that apply for funding to assist in the developing and the transition to administering their own tribal Title IV-E program directly.

**See:** [Technical assistance document to assist tribes implement a direct title IV-E program .](#)

For a list of tribes that have been awarded development grants to date **see:** [http://www.acf.hhs.gov/programs/cb/programs\\_fund/discretionary/2009.htm](http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/2009.htm) and [http://www.acf.hhs.gov/programs/cb/programs\\_fund/discretionary/2010.htm](http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/2010.htm)

### **Judicial Considerations**

- Is a *nunc pro tunc* order needed to document reasonable efforts and contrary to the welfare findings?
  - This is allowed only for the first 12 months that the Title IV-E funded program is in effect, if such finding was not previously made by the court.
  - Fostering Connections requires such documentation to determine child and case eligibility for Title IV-E reimbursement.
- Have any tribes, tribal organizations or consortia in your jurisdiction applied to administer their own Title IV-E program?
- Have any tribes, tribal organizations or consortia in your jurisdiction applied for a Tribal Title IV-E Plan Development Grants to administer their own Title IV E program? **See:** [http://www.acf.hhs.gov/programs/cb/programs\\_fund/discretionary/2009.htm](http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/2009.htm) and [http://www.acf.hhs.gov/programs/cb/programs\\_fund/discretionary/2010.htm](http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/2010.htm)

### **Questions to Ask from the Bench**

- Has the agency determined if the Indian Child Welfare Act (ICWA) applies?
- Has the Tribe taken jurisdiction over this child for purposes of the Indian Child Welfare Act and Title IV-E?
  - How will services continue to be provided to the child and family once the case is transferred to the Tribe?
- Does the Tribe need a *nunc pro tunc* order and if so, what were the reasonable efforts and contrary to the welfare circumstances at the time of the removal?

## **Title IV: Improvement of Incentives for Adoption**

### **Section 401: Adoption Incentives Program**

#### **Overview**

Fostering Connections enhances incentives available under previous law to promote the adoption of children from foster care. It renews the Adoption Incentive Grant Program for an additional five years; resets the adoption baseline on which adoption incentives are based to the number of adoptions in FY 2007; doubles the incentive payments for adoptions of children with special needs and older children adoptions; and gives states 24 months, rather than the previous 12 months, to use their adoption incentive payments.

Fostering Connections also permits states to receive an additional payment if the state's adoption rate exceeds its highest recorded foster child adoption rate since 2002.

#### **Judicial Considerations**

- Does the court regularly inquire about the agency's adoptive parent recruitment efforts and assist in those efforts as appropriate through follow-up hearings and convening meetings to develop communication, coordination, and collaboration?
- What are the average timelines for completing adoptions in your jurisdiction?
- How does the court work with stakeholders to expedite backlogs and appeals for adoption cases?
- How frequently does the court conduct reviews of children whose parental rights have been terminated to speed adoption finalization?
- How does the court encourage adoptions of older youth and children with special needs for whom reunification is not appropriate?
  - Examine closely the reasonable efforts taken to achieve permanency for older youth and special needs children.
- How does the court discourage and examine closely the use of APPLA as a permanency goal?
  - Under federal law, the court must ensure that when APPLA is chosen as a permanency plan that compelling reasons are documented as to why each of the other preferred permanency plans (reunification, adoption, guardianship, placement with a fit and willing relative) are not appropriate for the youth.
  - At each hearing, re-examine the APPLA goal to ensure that it is still the most

- appropriate goal and that compelling reasons still exist as to why each of the other permanency options are not appropriate.
- If permanency is not appropriately being pursued by the agency make a “no reasonable efforts” finding.
- Does the court encourage the explanation/benefits of adoption to the child, including older youth?

### **Questions to Ask from the Bench**

- What efforts has the agency made to find an adoptive placement for this child?
- Has the agency asked the child who is important to them and engaged in child-specific recruitment efforts and/or intensive family finding to identify potential resources for the child?
- What is the concurrent plan for the child? What efforts have been made to achieve the permanency plans?
- If the child is an older child what efforts has the agency made to explain adoption and its benefits to the child?
- If adoption is the permanency goal, what is the expected timeline for finalization and what steps are being taken to reach that goal?
- What are the barriers to finalizing an adoption?
  - Who has the ability to remove the barriers to adoption?
  - When will those barriers be removed?

## ***Section 402: Promotion of Adoption of Children with Special Needs***

### **Overview**

Fostering Connections gradually increases the number of children with special needs who can be adopted with federal adoption subsidy support by eliminating the income eligibility requirement over time. Fostering Connections “de-links” a child’s eligibility for federal adoption assistance payments from outdated Aid to Families with Dependent Children (AFDC) income requirements, as previously required under Title IV–E. In addition, children who are eligible for Supplemental Security Income (SSI), based solely on its medical and disability requirements, would automatically be considered children with special needs and eligible for adoption assistance without regard to the SSI income requirements.

Fostering Connections **requires** that savings resulting from these new Title IV-E eligibility rules must be invested in services (including post-adoption services) provided under Parts B and E of Title IV. The expansion of children eligible for federal adoption assistance payments will be phased in over nine years, with older children and those who have spent at least 60 consecutive months in care being eligible first. If a child is Title IV-E eligible, the entire sibling group will also be Title IV-E eligible when placed together, regardless of age or length of time in care. Each fiscal year, Fostering Connections adds a new group of eligible children by

age—16 and older on October 1, 2009, 14 and older on October 1, 2010, and so on. Starting October 1, 2017, all children with special needs, regardless of income or age, or time in care, will be eligible for federal adoption assistance.

### **Judicial Considerations**

- Does the court regularly inquire about the agency’s adoptive parent recruitment efforts for special needs children and their siblings and assist in those efforts as appropriate?
- Does the court promote reinvestment of de-linked dollars back into areas of unmet need in the child welfare system?
- How does the court create a sense of urgency for adoption of youth who have been in care over 60 months, are eligible by phase in age (ex. 14 as of October 1, 2010), or any eligible child who has a sibling(s)?
  - The expansion of support to siblings should help keep siblings together.
- What is the concurrent plan for the child?
- If the child is an older youth, what efforts has the agency made to explain adoption and its benefits to the youth?
- If adoption is the permanency goal, what is the expected timeline for finalization and what steps are being taken to reach that goal?
- Does the court conduct frequent reviews of children whose parental rights have been terminated to speed adoption finalization?
- Does the court encourage adoptions of children with special needs and examine closely the reasonable efforts taken to achieve permanency for older youth and special needs children?
- Does the court discourage and examine closely the use of APPLA as a permanency goal?
  - Under federal law, the court must ensure that when APPLA is chosen as a permanency plan that compelling reasons are documented as to why each of the other preferred permanency plans (reunification, adoption, guardianship, placement with a fit and willing relative) are not appropriate for the youth.
  - At each hearing, re-examine the APPLA goal to ensure that it is still the most appropriate goal and that compelling reasons still exist as to why each of the other permanency options are not appropriate.
  - If permanency is not appropriately being pursued by the agency, make a “no reasonable efforts” finding.

### **Questions to Ask from the Bench**

- Has the child been in care for greater than 60 months or is older than 16 years of age (October 1, 2009), older than 14 years of age (October 1, 2010), older than 12 years of age (October 1, 2011), etc.?
- What efforts have been made to find an adoptive home for this child?
- What are the barriers to finalizing an adoption?
  - Who has the ability to remove the barriers to adoption?
  - When will those barriers be removed?

### **Section 403: Adoption Tax Credit**

#### **Overview**

Fostering Connections **requires** states to inform all prospective and adopting parents that they are potentially eligible for the adoption tax credit. In March 2010, Public Law 111-148, the Patient Protection and Affordable Care Act, extended the adoption tax credit to December 31, 2011. The Act also increased the per-child credit for 2010 from \$12,170 to \$13,170, and made the credit refundable for 2010 and 2011. Because the adoption tax credit will be refundable, families who have smaller tax liability will now be able to benefit from the credit for adoptions finalized in 2010 and 2011.

#### **Judicial Considerations**

- What is the process of notifying the adoptive or prospective adoptive parents of the federal adoption tax credit (IRS form 8839)?
- What efforts are made to ensure they understand the eligibility requirements?

#### **Questions to Ask from the Bench**

- Ask prior to finalization if the adoptive parent has received information about the adoption tax credit and if they have any questions about it.

## Additional Resources for the Fostering Connections to Success and Increasing Adoptions Act of 2008

### General Resources

- For summaries, full text of law and additional resources: [www.grandfamilies.org](http://www.grandfamilies.org)
- Additional information and tools on this law available at the Fostering Connections Resource Center: [www.fosteringconnections.org](http://www.fosteringconnections.org)
- Children's Bureau Guidance:
  - A list of [key Children's Bureau policy, guidance and other implementation activities](#) related to Fostering Connections
  - Program Instruction (PI) on the law (7/9/10): [ACF-CB-PI-10-11](#)
  - Revised [Title IV-E plan pre-print](#) that incorporates Fostering Connections
  - [ACYF-CB-PI-10-07](#) – amended Public Assistance Cost Allocation Plan (PACAP) to expand training categories
- Extensive Kinship Q & A entitled: New Help for Children Raised by Grandparents and Other Relatives: [www.grandfamilies.org](http://www.grandfamilies.org)
- NCJFCJ: [www.ncjfcj.org](http://www.ncjfcj.org)
  - Resource Guidelines and Adoption and Permanency Guidelines - <http://www.ncjfcj.org/content/blogcategory/266/322/>
  - Text of the Fostering Connections Act with Judicial Considerations <http://www.ncjfcj.org/content/view/1194/535/>
- Other resources available at:
  - [http://www.americanbar.org/groups/child\\_law.html](http://www.americanbar.org/groups/child_law.html)
  - [www.clasp.org](http://www.clasp.org)
  - [www.childrensdefense.org](http://www.childrensdefense.org)

### Kinship Provisions Resources

- [Fostering Connections Kinship Toolkit](#)
  - General information about Kinship
    - [New Help for Children Raised by Grandparents and Other Relatives: Questions and Answers About the Fostering Connections to Success and Increasing Adoptions Act of 2008](#)
  - Guardianship Assistance Program Tools
    - [Five Key Questions to Assess the Fiscal Impact of the Guardianship Assistance Program](#)
    - [Making the Case for the Guardianship Assistance Program](#)
    - [Myths and Facts Related to Use of the Guardianship Assistance Program](#)
    - [Sample State Legislation to Implement the Guardianship Assistance Program](#)
    - [Sample Guardianship Assistance Agreement](#)
    - [Guide to Using the Guardianship Assistance Agreement](#)
    - [Checklist for Guardianship Assistance Program](#)

- Identification and Notice Tools
  - [Sample Letter for Notice to Relatives](#)
  - [Key Considerations for Implementing Notice to Relatives](#)
  - [Checklist for Identification of and Notice to Relatives](#)
  - [Relative Foster Care Licensing Waivers in the States: Policies and Possibilities](#)
  - [Office of Child Support Enforcement Action Transmittal AT-10-12](#) on the use of the Federal Parent Locator Service for child welfare agencies
- [ACYF-CB-PI-10-01](#) - provides State Title IV-E agencies and Tribes revised instructions on how to implement and operate the Guardianship Assistance Program (GAP)

### **Older Youth Provisions Resources**

- Frequently Asked Questions on the Provisions Designed to Impact Youth and Young Adults: [www.nationalfostercare.org](http://www.nationalfostercare.org)
- [Sample Legislation to Extend Foster Care, Guardianship, and Adoption Assistance Protections, Services and Payments to Young Adults Age 18 and Older](#)
- ABA Bar-Youth Empowerment Project Bench Cards located under Legal and Judicial Resources at: <http://www.abanet.org/child/empowerment/youthincourt.shtml>
- Charting a Better Future for Transitioning Foster Youth: Report from a National Summit on the Fostering Connections to Success Act available at: [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/youth\\_at\\_risk/transitioning\\_foster\\_youth\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/youth_at_risk/transitioning_foster_youth_report.authcheckdam.pdf)
  - See issues and questions specific to the Youth Engagement Breakout in the Appendix, Chapter 7 - Youth Engagement and Youth Focused Systems and Chapter 2 - Courts and the Legal Process
- [Foster Club's Transition Toolkit](#)

### **Education Provision Resources**

- NCJFCJ: [www.ncjfcj.org](http://www.ncjfcj.org)
  - [Educational Checklists](#)
- [Legal Center for Foster Care and Education](#)
  - [Q&A Factsheet: Education Provisions of the Fostering Connections Act](#)
  - [Fostering Connections State Implementation Toolkit](#)
  - [Fostering Connections and McKinney-Vento Overlap Series](#)

### **Health Provision Resources**

- American Academy of Pediatrics' Bright Futures guidelines: <http://www.brightfutures.aap.org>
- American Academy of Pediatrics' Healthy Foster Care America: <http://www.aap.org/fostercare/>
- [Healthy Beginnings, Healthy Futures: A Judge's Guide](#)
- [Health for Teens in Care: A Judge's Guide.](#)

### **Adoption Provision Resources**

- [ACYF-CB-PI-09-10](#) - establishes new criteria associated with the delinking of Adoption Assistance eligibility AFDC eligibility requirements
- [ACF-CB-IM-09-03](#) - extends the Adoption Incentive Program through FY 2013, updates the "base year" used to measure increases to FY 2007, doubles incentive payment amounts for special needs and older child adoptions and creates a "highest ever" foster child adoption rate pay
- [Adoption Incentives Program Grantees 2009](#) - states that received 2009 Incentive Awards
- [Adoption Incentives Program Grantees 2010](#) - states that received 2010 Incentive Awards
- North American Council on Adoptable Children Resources:
  - [Implementing the Adoption Assistance Provisions of the Fostering Connections Act](#)
  - [De-Linking Provision Will Result in New Child Welfare Funds](#)
  - [Claiming the Federal Adoption Tax Credit for Special Needs Adoptions](#)

### **Tribal Provisions Resources**

- [Technical assistance document to assist tribes implement a direct title IV-E program](#)
- For a list of tribes that have been awarded development grants to date **see:**
  - [http://www.acf.hhs.gov/programs/cb/programs\\_fund/discretionary/2009.htm](http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/2009.htm)
  - [http://www.acf.hhs.gov/programs/cb/programs\\_fund/discretionary/2010.htm](http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/2010.htm)
- [National Child Welfare Resource Center for Tribes](#)

## Collaborating Organizations

### **American Bar Association Center on Children and the Law**

Heidi Redlich Epstein, JD, MSW (kinship)  
Kelly Kristin, Esq. (education and older youth)  
Kathleen McNaught, Esq. (education)  
Andrea Khoury, Esq. (older youth)  
Eva Klain, Esq. (health)  
202 -662-1720

[http://www.americanbar.org/groups/child\\_law.html](http://www.americanbar.org/groups/child_law.html)

### **Miriam Aroni Krinsky, Esq.**

ABA Youth at Risk Commission Advisory Council, Member  
UCLA School of Public Affairs, Lecturer

[krinskym@yahoo.com](mailto:krinskym@yahoo.com)

### **Margaret A. Burt, Esq.**

Attorney in Private Practice, Consultant with ABA Center on Children and the Law  
585-385-4252

[mburt5@aol.com](mailto:mburt5@aol.com)

### **National CASA Association**

M. Carmela Welte, Deputy CEO  
1-800-628-3233, ext 203

[CASAforChildren.org](http://CASAforChildren.org)

### **ChildFocus**

Mary Bissell, Esq. and Jennifer Miller, MSW

<http://childfocuspartners.com/>

### **Children's Defense Fund**

Beth Davis-Pratt, Esq. and MaryLee Allen, MSW  
202-628-8787

<http://www.childrensdefense.org/policy-priorities/child-welfare/>

### **CLASP**

Tiffany Conway Perrin, MSW and Rutledge Hutson, Esq.  
202-906-8000

[http://www.clasp.org/issues?type=child\\_welfare](http://www.clasp.org/issues?type=child_welfare)

**Craig Dorsey, Esq.**

Attorney in Private Practice specializing in Indian child welfare law  
[Craig@dorsayindianlaw.com](mailto:Craig@dorsayindianlaw.com)

**Generations United**

Ana Beltran, Esq.  
202-289-3979  
[www.gu.org](http://www.gu.org)

**Juvenile Law Center**

Jennifer Pokempner, Esq.  
1-800-875-8887  
<http://www.jlc.org/>

**Honorable Katherine Lucero**

Supervisor for Dependency Court, Model Court Lead Judge  
Santa Clara County Superior Court, San Jose, California  
408-491-4740  
[klucero@scscourt.org](mailto:klucero@scscourt.org)

**National Center for State Courts**

Kay Farley, Executive Director, Government Relations Office  
202-684-2622  
<http://www.ncsc.org/>

**National Council of Juvenile and Family Court Judges**

Elizabeth Whitney Barnes, J.D.  
775-784-7524  
<http://www.ncjfcj.org/>

**National Foster Care Coalition**

202-280-2039  
<http://www.nationalfostercare.org/>

**The National Resource Center for Tribes (NRC4Tribes)**

Jerry Gardner, Executive Director  
323-650-5467  
[www.nrc4tribes.org](http://www.nrc4tribes.org)

**Voice for Adoption**

Nicole Dobbins, Executive Director  
202-210-8118  
[www.voice-for-adoption.org](http://www.voice-for-adoption.org)