



**Sample State Legislation to
Extend Foster Care, Adoption
and Guardianship Protections,
Services and Payments to
Young Adults Age 18 and Older**

June 2010

**American Bar Association Center on Children and the Law
Center for Law and Social Policy
Children's Defense Fund
Juvenile Law Center**

AUTHORS AND ACKNOWLEDGEMENTS

American Bar Association Center on Children and the Law

The American Bar Association's Center on Children and the Law and Commission on Youth at Risk, in partnership with Casey Family Programs and the Eckerd Family Foundation, started the *Bar-Youth Empowerment Project*, focused on transitioning youth. The project aims to improve outcomes for youth currently in foster care as well as young people who have aged out of care by promoting youth participation in court cases that affect them and ensuring access to legal counseling and representation to youth in need of specialized legal assistance. For more information, please contact Kristin Kelly at kellyk@staff.abanet.org or Andrea Khoury at khourya@staff.abanet.org.

Center for Law and Social Policy

CLASP's mission is to develop and advocate for policies at the federal, state and local levels that improve the lives of low income people. In particular, we seek policies that work to strengthen families and create pathways to education and work. CLASP's child welfare work seeks to prevent child abuse and neglect and to ameliorate the trauma experienced by children who are maltreated. We promote policies that empower parents to care for their children when possible and provide alternative, loving homes for children whose parents cannot care for them. For more information on Fostering Connections, contact Tiffany Conway Perrin at tconwayperrin@clasp.org or (202)906-8026.

Children's Defense Fund

The Children's Defense Fund Leave No Child Behind® mission is to ensure every child a *Healthy Start*, a *Head Start*, a *Fair Start*, a *Safe Start* and a *Moral Start* in life and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective and independent voice for *all* the children of America who cannot vote, lobby or speak for themselves. We pay particular attention to the needs of poor and minority children and those with disabilities. CDF educates the nation about the needs of children and encourages preventive investments before they get sick, drop out of school, get into trouble or suffer family breakdown. CDF began in 1973 and is a private, nonprofit organization supported by foundation and corporate grants and individual donations. We have never taken government funds. For more information about Fostering Connections, please contact Beth Davis-Pratt at edavis-pratt@childrensdefense.org.

Juvenile Law Center

Founded in 1975 as a non-profit legal service, Juvenile Law Center (JLC) is one of the oldest multi-issue public interest law firms for children in the United States. In its Transitions to Adulthood work, JLC promotes policies and practices that are informed by the latest research on adolescent development and research which confirms every child's need for healthy attachments to caring and consistent adults in their lives. JLC is working with the child welfare and juvenile justice systems to aid older youth in their transition out of these public systems that have supported them, and into successful, stable, healthy, and productive lives as adults in the community. For more information, please contact Jennifer Pokempner at JPokempner@jlc.org.

The authors sincerely thank the following individuals who contributed significant time and expertise in the development of this document: Dennis Blazey, Emily Buss, Kate Egbert, Adrienne Fernandes-Alcantara, Miriam Krinsky, Michael Piraino, and Erik Pitchal.

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Sample State Legislation¹ to Extend Foster Care, Adoption and Guardianship Protections, Services and Payments to Young Adults Age 18 and Older²

TABLE OF CONTENTS

<u>PART I – INTRODUCTION</u>	2
<u>PART II – SAMPLE LEGISLATION</u>	6
<u>PART III – SAMPLE LEGISLATION WITH COMMENTARY</u>	13
<u>ARTICLE 1. GENERAL PROVISIONS</u>	15
<u>SECTION 101. SHORT TITLE</u>	15
<u>SECTION 102. DEFINITIONS</u>	15
<u>ARTICLE 2. EXTENSION OF CARE</u>	17
<u>SECTION 201. ADOPTION AND GUARDIANSHIP ASSISTANCE SHALL BE EXTENDED TO AGE 21 FOR ELIGIBLE YOUNG ADULTS</u>	17
<u>SECTION 202. FOSTER CARE SHALL BE EXTENDED TO AGE 21</u>	19
<u>SECTION 203. TERMINATION OF CARE—GENERAL PROVISIONS</u>	20
<u>SECTION 204. VOLUNTARY TERMINATION OF CARE</u>	21
<u>SECTION 205. OPPORTUNITY TO RE-ENTER CARE</u>	22
<u>ARTICLE 3. COURT SUPERVISION</u>	24
<u>SECTION 301. LEGAL REPRESENTATION AND CASA ADVOCACY FOR THE YOUNG ADULT IN HIS OR HER DEPENDENCY CASE</u>	24
<u>SECTION 302. LAST COURT REVIEW PRIOR TO CHILD TURNING 18</u>	26
<u>SECTION 303. PERIODIC REVIEWS FOR YOUNG ADULTS</u>	27
<u>SECTION 304. RIGHTS OF THE YOUNG ADULT</u>	28
<u>ARTICLE 4. PROGRAM STRUCTURE</u>	29
<u>SECTION 401. SERVICES THAT SHALL BE PROVIDED TO THE YOUNG ADULT</u>	29
<u>SECTION 402. TRANSITION PLAN</u>	32
<u>APPENDICES</u>	34

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² This sample legislation focuses on children and young adults in the dependency system. However, because many states claim IV-E reimbursement for children in the delinquency and status offense systems, states wishing to extend care beyond age 18 for these populations should consider the applicability of these provisions, especially as they relate to IV-E eligibility for children other than those in dependency cases.

PART I - INTRODUCTION

On October 7, 2008, the *Fostering Connections to Success and Increasing Adoptions Act* (Public Law 110-351) was signed into law. Unanimously passed by both houses of Congress, Fostering Connections represents the most significant child welfare reform legislation in more than a decade. The act's numerous improvements are intended to achieve better outcomes for children and young adults who are at risk of entering or have spent time in foster care. Fostering Connections promotes, among other things, extension of foster care, adoption and guardianship beyond age 18; permanent families for children; important links to family; sibling connections; educational stability and coordinated health planning; expanded protection and supports for American Indian children; and new training opportunities for a broad group as individuals working with children and young adults involved with the child welfare system. A number of important provisions in Fostering Connections are designed to positively impact the lives of, and outcomes for, older children and young adults in foster care and those transitioning out of care. The new law recognizes important steps that are needed to meet the needs of older children and young adults as they prepare to leave foster care. Congress heard from young people who were alumni of foster care, from states that are responding to the needs of older youth in care, and from researchers who have documented the benefits to youth who stay in foster care longer and have improved their chances of success when they leave care.

Fostering Connections presents an unprecedented opportunity to provide care and support to young adults who are in foster care or who exited foster care to guardianship or adoption. Beginning October 1, 2010, under the act, states have the option to amend their Title IV-E state plans to claim federal funds for young adults in foster care beyond their 18th birthday, or for those who exited foster care after age 16 to guardianship or adoption, to age 19, 20, or 21. With limited exceptions, states can currently only claim federal assistance for children up to their 18th birthday. States will be federally reimbursed for those young adults who are eligible for IV-E maintenance payments³ and who are:

- Completing secondary education or in a program leading to an equivalent credential;
- Enrolled in an institution that provides post-secondary or vocational education;
- Participating in a program or activity designed to promote, or remove barriers to, employment;
- Employed for at least 80 hours per month; or
- Incapable of doing any of the activities described above due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

For young adults in foster care, this extension should be used by states as additional time to identify a permanent family, and to provide the young adult with the services, supports, and skills needed to transition successfully to adulthood. The extension of guardianship and adoption support provides important options for young adults, allowing them to pursue the most

³ To be eligible for IV-E reimbursement, the child must meet all eligibility requirements under Title IV-E of the Social Security Act for foster care, including removal from an income-eligible home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.

appropriate permanency option without having to make the difficult choice between permanency and needed assistance.

Fostering Connections also requires that, in the 90-day period immediately before a child turns 18 (or 19, 20 or 21 as the state may elect), a caseworker and any other appropriate individuals work with him or her to develop a personalized transition plan that is as detailed as the child chooses. The plan must include specifics on housing, health insurance, education, local opportunities for mentors and continuation of support services, workforce supports and employment services. This transition plan is required for *all* children and young adults for whom foster care maintenance payments are being made. Children and young adults who have returned home or for whom kinship guardianship assistance or adoption assistance payments are being made must also have a transition plan if they are receiving Chafee Program benefits or services. These provisions build on the good work that has long been underway in a number of states. Prior to Fostering Connections, a number of states provided some measure of services and supports to young adults in, or who had been in, foster care.

Like many of their counterparts in the general population, few young adults in foster care are prepared to support themselves at age 18. Approximately half of all young people between the ages of 18 and 24 still live with their parents, and most rely on their parents for some financial support until they are well into their twenties.⁴ But, such support is often unavailable to young adults who age out of foster care. Instead, they often report being told, on the morning of their 18th birthdays, that they must leave their foster homes. Two major studies⁵ – the Midwest Evaluation of the Adult Functioning of Former Foster Youth and California’s Fostering Connections to Success Act and the Costs and Benefits of Extending Foster Care to 21 – have examined the impact of extending foster care to young adults older than 18. They found that, compared to those who age out of foster care, young adults age 18 and older who remain in care are better off, as is society.⁶ There may be fiscal benefits realized for states that extend support to

⁴ See, e.g., Frank F. Furstenberg, Jr., Sheela Kennedy, Vonnie C. Mcloyd, Rubén G. Rumbaut & Richard A. Settersten, Jr., *Growing Up is Harder to Do*, 3 CONTEXTS 33 (Summer 2004), available at <http://contexts.org/magazine/docs/furstenberg.pdf>; Robert Schoeni & Karen Ross, *Family Support During the Transition to Adulthood*, National Poverty Law Center, Policy Brief #3 (Aug. 2004), available at http://www.npc.umich.edu/publications/policy_briefs/brief3/brief3.pdf.

⁵ Currently, limited research or data exists on outcomes for young adults previously in the foster care system. Beginning on October 1, 2010, states must begin collecting data for the National Youth in Transition Database (NYTD). NYTD will collect case-level information on youth in care including the services paid for or provided by the state agencies that administer the Chafee Foster Care Independence Program (CFCIP), as well as the outcome information on young adults who are in or who have aged out of foster care. This is an important opportunity to gain much-needed information about this population and evaluate the programs and services needed to support positive transitions to adulthood.

⁶ See, e.g., Mark Courtney, Amy Dworsky, Gretchen Cusick, Judy Havlicek, Alfred Perez, Tom Keller, *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 21*, Chapin Hall Research Center for Children, University of Chicago, (December 2007): 68-70. http://www.jimcaseyyouth.org/docs/ch_midwest_study121207.pdf; Peter Pecora, Ronald Kessler, Jason Williams, Kirk O’Brien, Chris Downs, Diana English, James White, Eva Hiripi, Catherine White, Tamera Wiggins & Kate Holmes, *Improving Foster Family Care: Findings from the Northwest Foster Care Alumni Study*. Casey Family Programs, (2005). <http://www.casey.org/NR/rdonlyres/4E1E7C77-7624-4260-A253-892C5A6CB9E1/375/CaseyAlumniStudyupdated082006.pdf>; M.B. Kushel, I.H. Yen, L. Gee & M.E. Courtney, *Homelessness and Health Care Access After Emancipation: Results from the Midwest Evaluation of Adult*

young adults age 18 and older.⁷ For example, extended support can reduce incarceration and reliance on public assistance, and increase positive outcomes, like higher education completion and enhanced employability, which can create concrete fiscal benefits.

How to Use this Sample Legislation

This sample legislation is a tool that state policymakers, administrators and advocates can use as they advocate for and develop legislation to extend support to young adults beyond age 18 in response to Fostering Connections. It can be the basis for new legislation or help in evaluating current state laws or pending legislation.

This sample legislation takes full advantage of the federal support offered by Fostering Connections in two key areas. First, though Fostering Connections allows states to extend care to age 19, 20 or 21, this sample legislation assumes that care and support would be extended to age 21. Second, the act permits states to extend foster care, adoption assistance, kinship guardianship assistance or any combination of the three to age 19, 20 or 21. This sample legislation extends all three forms of assistance to age 21. This sample legislation also goes beyond Fostering Connections in critical areas affecting young adults. It extends care and support to all young adults up to age 21, regardless of IV-E eligibility whereas Fostering Connections provides federal support only for those young adults who are IV-E eligible.⁸ It also gives young adults age 18 and older the option to re-enter care after exiting, even though it is not clear that federal support would be available to them.

The remainder of the sample legislation is consistent with the requirements in Title IV-E of the Social Security Act (Title IV-E),⁹ as amended by Fostering Connections. However, recognizing that the provisions in Fostering Connections do not by themselves make for a coherent state law, additional language was needed to flesh out policies regarding case plans, transition plans and court oversight. Where possible, language used is precisely what is required by Fostering Connections. However, in some instances the sample legislation includes additional detail that, while not required under the new law, creates sound policy that incorporates best practice. Departures from the letter of the law are clearly identified in the commentary.

This sample state legislation provides states with language to:

- Extend foster care, guardianship and adoption assistance for young adults to age 21;
- Make the most of federal support available under Fostering Connections to free up state and local funding to offer young adults additional supports;

Functioning of Former Foster Youth. Archives of Pediatric Medicine 161 no. 10 (2007). <http://archpedi.amaassn.org/cgi/content/full/161/10/986>.

⁷ For more information about the fiscal advantages for states extending assistance to young adults past age 18, see the National Foster Care Coalition's "Frequently Asked Questions on the Provisions Designed to Impact Older Youth" at www.nationalfostercare.org.

⁸ Throughout this document, the term "IV-E eligible" means that a child or young adult qualifies for IV-E reimbursement by fulfilling the requirements for federal foster care, adoption assistance, or guardianship assistance. For a complete description of these eligibility requirements, please see Appendix A.

⁹ Throughout this document, "Title IV-E" or "IV-E" refers to the programs and requirements under the Social Security Act that encompass federal foster care, guardianship and adoption assistance.

- Extend care and support to young adults who are not IV-E eligible;¹⁰
- Embed in statute best practices derived from research, policy, and existing programs that support permanent families and better outcomes for young adults while they are in and after they exit care; and
- Extend required court oversight for young adults in foster care beyond age 18.

The sample legislation is provided without commentary on pages 6-14. The sample legislation paired with detailed commentary is available on pages 15-33.

PART II – SAMPLE LEGISLATION

ARTICLE 1. GENERAL PROVISIONS

SECTION 101. SHORT TITLE

This “Sample State Legislation to Extend Foster Care, Adoption and Guardianship Protections, Services and Payments to Young Adults Age 18 and Older” is herein referred to as “sample legislation” or “legislation.”

SECTION 102. DEFINITIONS

For the purposes of this legislation:

1. “Administrative review” means a review open to the participation of the child or young adult and the parents, guardians, or other caretakers of the child, unless a court determines participation is not in the best interests of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or young adult or the parents who are the subject of the review, and which is equivalent to the review in which issues are addressed at permanency hearings required by 42 U.S.C. § 675(5)(C).
2. “Child” means an individual who has not attained 21 years of age.
3. “Department” means the state, county, or tribal agency responsible for rendering child welfare services.
4. “Dependency” means the basis for jurisdiction by a state, local or tribal court that encompasses civil protection and oversight of a child who has been found to be abused, neglected, or abandoned, or who has otherwise been found dependent upon Department care and support, or who has been placed in Department care through a voluntary placement agreement executed by a parent or legal guardian..
5. “Fostering Connections” refers to the federal Fostering Connections to Success and Increasing Adoptions Act, Public Law 110-351.
6. “Independent living agency” means a non-profit organization with expertise in the placement and supervision of young adults that meets any relevant licensing requirements of the state and that is operating under contract with the Department to provide placement, case management and supervision services to young adults in foster care. Primary responsibility for the young adults remains with the Department, but those responsibilities can be carried out under contract with appropriate private non-profit service providers.
7. “Independent Living Plan” means a written description of the programs and services which will help a child or young adult prepare for the transition from foster care to independent living as described in 42 U.S.C. § 675(1)(D) and Section 401(b) of this Sample Legislation.
8. “Juvenile court” means any court having dependency jurisdiction.
9. “Medical Condition” means a mental, physical, or emotional condition, including cognitive impairment or addiction.
10. “Supervised setting in which the individual lives independently” means a living arrangement, approved by the Department or an “independent living agency” where the individual lives independently, but in which he or she is provided supervision, case management and supportive services by the Department or “independent living agency” that offer

developmentally appropriate freedom and responsibility to prepare him or her for adulthood. To approve a setting the Department or “independent living agency” must ensure that:

- a. Young adults are provided with a level of supervision commensurate with their individual needs, as assessed by the Department or “independent living agency,” consistent with the young adult’s medical treatment plan, including physical, mental health, and substance abuse treatment plans; permanency plan and independent living goals. Less than 24 hour on-site supervision is permitted, however, 24 hour crisis intervention and support must be available.
 - b. All requirements related to the case plan as established in 42 U.S.C. § 675(1), including the transition plan, and the case review system established in 42 U.S.C. § 675(5) and its required continued pursuit of permanency consistent with the permanency goal, are satisfied and integrated with the goals of the supervised setting in which the individual lives independently.
 - c. Young adults living independently in supervised settings are offered, at a minimum, supportive services in: life skills instruction and counseling; educational support and progress; employment preparation and placement; development and maintenance of support networks, including family; health and wellness; and housing search and placement. The determination of what services will be provided and for how long will be based on the young adult’s assessed needs, interests, and input and will be consistent with the goals set in the young adult’s case plan. Acceptance of supportive services beyond those required in section 202 by the young adult shall not be considered a condition of eligibility for placement or continuation in a supervised setting in which the individual is living independently. Provision and delivery of supportive services shall be in coordination with the local Independent Living Program.
 - d. Approved living settings are in compliance with all state or local health and housing codes. Approved living settings do not have to be contracted with or in the legal control of the Department or independent living agency providing supervision, case management, or supportive services, however, responsibility for the young adult remains with the Department.
11. “Transition Plan” means a personalized plan developed at the direction of a child or young adult, with the assistance and support of a caseworker and, as appropriate, other representatives of the child or young adult as described at 42 U.S.C. § 675(5)(H) and Section 402 of this Sample Legislation.
12. “Young adult” means a child who has attained 18 years of age but who has not attained 21 years of age.

ARTICLE 2. EXTENSION OF CARE

SECTION 201. ADOPTION AND GUARDIANSHIP ASSISTANCE SHALL BE EXTENDED TO AGE 21 FOR ELIGIBLE YOUNG ADULTS

With respect to a young adult for whom an adoption assistance or kinship guardianship agreement is executed after the young adult attained 16 years of age or older, the Department shall continue making adoption and guardianship assistance payments on behalf of that young adult until age 21.

SECTION 202. FOSTER CARE SHALL BE EXTENDED TO AGE 21

1. Unless care and responsibility are terminated pursuant to Sections 203 or 204, the Department shall retain care and responsibility for a young adult in foster care between the ages of 18 and 21 if that young adult is:
 - a. Completing secondary education or a program leading to an equivalent credential;
 - b. Enrolled in an institution which provides post-secondary or vocational education;
 - c. Participating in a program or activity designed to promote, or remove barriers to, employment;
 - d. Employed for at least 80 hours per month; or
 - e. Incapable of doing any of the activities described in subclauses a. through d. due to a medical condition, which incapability is supported by regularly updated information in the case plan of the young adult.
2. A juvenile court shall, except as provided in Sections 203 and 204, retain jurisdiction over a young adult in foster care between ages of 18 and 21 if the court assumed jurisdiction over the young adult before his or her 18th birthday.
3. Nothing in this statute shall abrogate any responsibilities of the Department or the court on behalf of the young adult, including the protections required under Section 303, or responsibilities of the young adult under state or federal law or regulation.

SECTION 203. TERMINATION OF CARE—GENERAL PROVISIONS

1. The extended jurisdiction of the court and continued care and responsibilities of the Department provided for in Section 202 terminate on the earliest of:
 - a. The date the young adult knowingly and voluntarily withdraws consent as set forth in Section 204;
 - b. The young adult exits foster care to a permanent home consistent with his or her permanency plan; or
 - c. The young adult's 21st birthday.
2. Notwithstanding the foregoing, the court shall not terminate its jurisdiction until it finds, following a hearing held after notice to all parties, that:
 - a. The Department has complied with the provisions of Section 402; or
 - b. The young adult has attained the age of 21 and despite ongoing reasonable efforts on the part of the Department to provide him or her services and inform him or her of the right to remain in care beyond age 18, the young adult has not participated in the development of the Transition Plan under Section 402.

SECTION 204. VOLUNTARY TERMINATION OF CARE

1. If the young adult withdraws consent to extended court jurisdiction and continued care and responsibility by the Department under Section 202, a court hearing must be held before court jurisdiction can be terminated and before the Department may close its case.
2. At the hearing, the following criteria must be met before court jurisdiction can be terminated and before the Department may close its case:
 - a. Attendance of the young adult's attorney at the hearing; and
 - b. Attendance of the young adult at the hearing; or
 - c. Findings by the court that:
 - i. The young adult has been informed by his or her attorney of his or her right to attend the hearing and has provided written consent to waive this right;

- ii. The young adult has been informed of the potential negative effects of terminating care early, the option to re-enter care before reaching age 21, the procedure and limitations on re-entering care, the availability of aftercare services, and that the young adult has signed a document attesting that he or she has been so informed and understands these provisions, and
 - iii. The Department has complied with Section 402.
3. All provisions under Section 304 shall apply to hearings under this Section.

SECTION 205. OPPORTUNITY TO RE-ENTER CARE

1. A young adult who exited foster care at or after reaching his or her 18th birthday, but before reaching age 21, may petition the court to resume dependency jurisdiction and the Department to re-open its case. The court shall resume jurisdiction and the Department shall re-open the case if the young adult is engaged in the activities described in Section 202(1).
2. The Department shall create a clear and developmentally-appropriate notice discussing the rights of young adults' who were formerly in foster care to services under this sample legislation. The notice shall include information about what services they will be eligible for and how such services may be obtained. The Department shall disseminate this information to all young adults in foster care at their last court review before exiting care as described in Section 302 and at the hearing on their petition to resume dependency jurisdiction as described in this section.

ARTICLE 3. COURT SUPERVISION

SECTION 301. LEGAL REPRESENTATION AND CASA ADVOCACY FOR THE YOUNG ADULT IN HIS OR HER DEPENDENCY CASE

1. All young adults shall be appointed an attorney who has received training appropriate to the role, and who has adequate time and resources to provide effective legal representation in the proceeding.
2. The attorney's representation of the young adult shall be client directed, and the attorney shall be bound by the state's Rules of Professional Responsibility.
3. The attorney shall protect the young adult's legal rights and vigorously advocate for the young adult's wishes and goals, including assisting the young adult as necessary to ensure that the young adult receives the services required under this sample legislation.
4. For young adults who were appointed a guardian *ad litem* (GAL) attorney before age 18, appointment may be continued but under a client directed model of representation.
5. If the young adult re-enters care under Section 204 and does not have an attorney, the court shall appoint one for the young adult.
6. In addition, the judge has discretion to appoint a court appointed special advocate (CASA volunteer), or continue the appointment of a CASA volunteer, with the young adult's consent.

SECTION 302. LAST COURT REVIEW PRIOR TO CHILD TURNING 18

1. During the last review hearing before the child turns 18, the court shall:
 - a. Address whether the child plans to remain in foster care, and if so, ensure the child's transition plan includes a plan for meeting one or more of the criteria listed in Section 202(1); and

- b. Ensure the child has been informed of:
 - i. The right to request termination of dependency jurisdiction and discharge from the Department's care;
 - ii. The right to continued services, which include the Department's obligations under Sections 202, 401 and 402; and
 - iii. The opportunity to re-enter care in accordance with Section 205.
- c. If the young adult requests termination of dependency jurisdiction and discharge from the Department's care, the court shall ensure the young adult has been informed of:
 - i. Any services or benefits for which the young adult may be eligible based on being formerly in the care and custody of the Department including, but not limited to, services or benefits available under the Chafee Foster Care Independence Act, 42 U.S.C. § 677;
 - ii. Any services or benefits that may be lost through termination of dependency jurisdiction; and
 - iii. Any other federal, state, local, tribal or community-based services or supports available to the child.

SECTION 303. PERIODIC REVIEWS FOR YOUNG ADULTS

With respect to any young adult who receives continued care from the Department at or after age 18 under Sections 202 and/or 205, the state shall ensure that:

1. A case review system is in place that includes:
 - a. Judicial findings regarding:
 - i. The status of the issues described in 42 U.S.C. § 675 (5)(A), (D), (E), (G) and (H); and
 - ii. Whether reasonable efforts have been made to place siblings together unless the state documents that such a joint placement would be contrary to the safety and well being of any of the siblings, and in the case of siblings who are not jointly placed, a detailed plan for how ongoing frequent visitation or interaction will be achieved unless it is found that frequent visitation or interaction would be contrary to the safety and well being of any of the siblings.
 - b. The frequency and mechanism for review described in 42 U.S.C. § 675 (5)(B),
 - c. The procedural protections described in 42 U.S.C. § 675 (5)(C), including that in all permanency hearings or hearings regarding the transition of the young adult from foster care to independent living, that the court or administrative body consults, in an age-appropriate manner, with the young adult regarding the proposed permanency or transition plan for the young adult; and
 - d. Any other procedural protections that apply to children under 18 under existing state or tribal law.
2. The court maintains oversight to ensure the Department is coordinating with the appropriate agencies, and, as otherwise permitted, maintains oversight of other agencies involved in implementing the young adult's case plan, including the independent living plan and, when applicable, the transition plan.
3. The Department prepares and presents to the court a report, developed in collaboration with the young adult, addressing the young adult's progress in meeting the goals in the case plan, including the independent living plan and transition plan, when applicable, and shall propose modifications as necessary to further those goals.

4. The court determines whether the Department and any service provider under contract with the Department is providing the appropriate services as provided in the case plan including the independent living plan, and when applicable, the transition plan.
 - i. If the court believes that the young adult is entitled to additional services to achieve the goals enumerated in the case plan, under the Department's policies, or under a contract with a service provider, the court may order the Department to take action to ensure that the young adult receives the identified services.
5. The young adult or any other party to the dependency case can request an additional hearing or review.

SECTION 304. RIGHTS OF THE YOUNG ADULT

1. Nothing in this sample legislation shall be construed to abrogate any other rights that a person, who has attained 18 years of age, may have as an adult under state law.
2. Young adults have a right to:
 - a. Receive notice of case and permanency plan meetings, team decision-making meetings, administrative reviews, court hearings, and any other case-related proceedings or meetings;
 - b. Be involved in the development of a personalized transition plan as described in Section 402;
 - c. Be present and address the court;
 - d. Legal representation as described in Section 302; and
 - e. Any other privileges afforded to parties to dependency proceedings under state or tribal law.
3. If the young adult is not present at any hearing, the court shall make a finding as to whether the young adult was given notice and made an informed decision not to attend, in order to proceed with the hearing, or postpone the hearing until the young adult may attend.

ARTICLE 4. PROGRAM STRUCTURE

SECTION 401. SERVICES THAT SHALL BE PROVIDED TO THE YOUNG ADULT

1. The Department shall revise the written case plan for each young adult in foster care, after consultation with the young adult to ensure it includes at least the following:
 - a. A description of the type of foster family home, institution or "supervised setting in which the individual lives independently," in which a young adult is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the young adult plans to carry out the voluntary placement agreement entered into, or judicial determination made, with respect to the young adult in accordance with 42 U.S.C. § 672(a)(1) and
 - b. A plan for assuring that the young adult receives safe and proper care and that services are provided to the young adult, parents, and foster parents in order to improve the conditions in the parents' home, facilitate return of the young adult to his own safe home or the permanent placement of the young adult, and address the needs of the young adult while in foster care, including a discussion of the appropriateness of the services that have been provided to the young adult under the plan.
 - c. Documentation of the reasonable efforts that have been made to place siblings together, or documentation that such a joint placement would be contrary to the safety and well

being of any of the siblings; and in the case of siblings who are not jointly placed, a detailed plan for how ongoing frequent visitation or interaction will be achieved or documentation that frequent visitation or interaction would be contrary to the safety and well being of any of the siblings. This documentation shall be updated in accordance with the review and updating of the case plan.

- d. The health and education records of the young adult, including the most recent information available regarding:
 - i. The names and addresses of the young adult's health and educational providers;
 - ii. The young adult's grade level performance;
 - iii. The young adult's school record;
 - iv. A record of the young adult's immunizations;
 - v. The young adult's known medical problems;
 - vi. The young adult's medications; and
 - vii. Any other relevant health and education information concerning the young adult determined to be appropriate by the Department.
- e. A written description of the programs and services that will help the young adult prepare for the transition from foster care to independent living, including, but not limited to, documentation that assistance has been provided to:
 - i. Complete applications for health insurance, including applications for Medicaid;
 - ii. Obtain referrals for, apply for, and obtain safe, stable, and age appropriate housing;
 - iii. Maintain relationships with individuals who are important to the young adult, including searching for individuals with whom the young adult has lost contact;
 - iv. Access information about maternal and paternal relatives including any siblings, unless contrary to the safety and well-being of the young adult;
 - v. Obtain employment or other financial support;
 - vi. Obtain a government issued identification card;
 - vii. Open and maintain a bank account;
 - viii. Obtain appropriate community services and programs including health, mental health, developmental disability, and other disability services and supports; and, where appropriate:
 - ix. Satisfy any juvenile justice system requirements and assist with expunging the young adult's juvenile's record;
 - x. Complete secondary education;
 - xi. Apply for admission and aid for postsecondary educational or vocational programs;
 - xii. Obtain the necessary state court findings and then apply for Special Immigrant Juvenile Status, or apply for other immigration relief that they may be eligible for, including achievement of citizenship status;
 - xiii. Create a health care power of attorney as required by P.L. 111-148;
 - xiv. Apply for any public benefits or benefits that he or she may be eligible for or may be due through his or her parents or relatives, including but not limited to TANF, SSI, SSDI, Survivor's Benefits, WIC, Food Stamps, LIHEAP; and, if applicable,
 - xv. Assist with applying for a legal name change.
- f. In the case of a young adult whose permanency plan is adoption or placement in another permanent home, documentation of the steps the Department is taking to find an adoptive family or other permanent living arrangement for the young adult to place him or her with an adoptive family, a fit and willing relative, a legal guardian, or in another planned

permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include young adult-specific recruitment efforts such as the use of State, regional and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-state or interstate placements and intensive family finding efforts designed to facilitate connections with adult relatives or others with a significant relationship to the young adult.

- g. In the case of a young adult with respect to whom the permanency plan is placement with a relative and receipt of kinship guardianship assistance payments under 42 U.S.C. § 673(d), a description of:
 - i. The steps that the agency has taken to determine that it is not appropriate for the young adult to be returned home or adopted;
 - ii. The reasons for any separation of siblings during placement;
 - iii. The reasons why a permanent placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the young adult's best interests;
 - iv. The ways in which the young adult meets the eligibility requirements for a kinship guardianship assistance payment;
 - v. The efforts the agency has made to discuss adoption by the young adult's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefore; and the efforts made by the Department to discuss with the young adult's parent or parents the kinship guardianship assistance arrangement, or the reasons why those efforts were not made.
- h. A plan for ensuring the educational stability of the young adult while in foster care, including:
 - i. Assurances that the placement of the young adult in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the young adult is enrolled at the time of placement; and
 - ii. If the young adult has not completed secondary education, an assurance that the Department has coordinated with appropriate local educational agencies (as defined under section 9101 of the Elementary and Secondary Education Act of 1965) to ensure that the young adult remains in the school in which the young adult is enrolled at the time of placement; or
 - a. If remaining in such school is not in the best interests of the young adult, assurances by the Department and local educational agencies that they will provide immediate and appropriate enrollment in a new school, with all of the educational records of the young adult provided to that school.

SECTION 402. TRANSITION PLAN

During the 90-day period immediately prior to the date on which the young adult in foster care will attain 21 years of age, or the date on which a child or young adult will exit foster care pursuant to Section 203 or 204, whether during that period foster care maintenance payments are being made on the child or young adult's behalf, or the child or young adult is receiving benefits or services under 42 U.S.C. § 677, a caseworker on the staff of the Department shall:

- 1. In collaboration with, as appropriate, other representatives of the child or young adult, provide the child or young adult with assistance and support in developing a transition plan that is personalized at the direction of the child or young adult, and that includes specific

options for the child or young adult on housing, health insurance, education, local opportunities for mentors and continuing support services, work force supports and employment services, and that assists the child or young adult in applying for Special Immigrant Juvenile Status or other appropriate immigration relief and citizenship status, if necessary, and that this plan is as detailed as the child or young adult may elect and ensures that the child or young adult has permanent adult connections;

2. Provide the child or young adult with the following documentation:
 - a. Copy of the child's or young adult's credit report;
 - b. Copy of the child's or young adult's social security card;
 - c. Certified copy of the child's or young adult's birth certificate;
 - d. Copy of the child's or young adult's driver's license or government issued ID card;
 - e. Letter including the dates that the child or young adult was within jurisdiction of the court;
 - f. Letter including a statement that the child or young adult was in foster care, in compliance with financial aid documentation requirements;
 - g. The child's or young adult's entire educational records, obtained through a court order if necessary;
 - h. The child's or young adult's entire health and mental health records, obtained through a court order if necessary;
 - i. Documentation of the child's or young adult's health insurance or Medicaid;
 - j. Documentation of a health power of attorney for the child or young adult;
 - k. Proof of the child's or young adult's citizenship or legal residency;
 - l. Clear and age appropriate written instructions on filing a petition for the child or young adult to re-enter care, including a completed sample petition; and
 - m. The process for accessing their case file, and where applicable:
 - n. Death certificates of the child's or young adult's parents; and
 - o. Termination of Parental Rights orders.
3. Coordinate with appropriate local public and private agencies in designing the Transition Plan.
4. Coordinate the Transition Plan with any other appropriate plans, including but not limited to the Independent Living Plan (as described at 42 U.S.C. § 675(1)(D) and Section 401(b) of this sample legislation), and an Individuals with Disabilities Education Act transition plan (as described at 34 CFR § 300.347).
5. Amend and update the Transition Plan for any young adult re-entering care under Section 205.

PART III – SAMPLE LEGISLATION WITH COMMENTARY

ARTICLE 1. GENERAL PROVISIONS

SECTION 101. SHORT TITLE

This “Sample State Legislation to Extend Foster Care, Adoption and Guardianship Protections, Services and Payments to Young Adults Age 18 and Older” is herein referred to as “sample legislation” or “legislation.”

SECTION 102. DEFINITIONS

For the purposes of this legislation:

1. “Administrative review” means a review open to the participation of the child or young adult and the parents, guardians, or other caretakers of the child, unless a court determines participation is not in the best interests of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or young adult or the parents who are the subject of the review, and which is equivalent to the review in which issues are addressed at permanency hearings required by 42 U.S.C. § 675(5)(C).
2. “Child” means an individual who has not attained 21 years of age.
3. “Department” means the state, county, or tribal agency responsible for rendering child welfare services.
4. “Dependency” means the basis for jurisdiction by a state, local or tribal court that encompasses civil protection and oversight of a child who has been found to be abused, neglected, or abandoned, or who has otherwise been found dependent upon Department care and support, or who has been placed in Department care through a voluntary placement agreement executed by a parent or legal guardian..
5. “Fostering Connections” refers to the federal Fostering Connections to Success and Increasing Adoptions Act, Public Law 110-351.
6. “Independent living agency” means a non-profit organization with expertise in the placement and supervision of young adults that meets any relevant licensing requirements of the state and that is operating under contract with the Department to provide placement, case management and supervision services to young adults in foster care. Primary responsibility for the young adults remains with the Department, but those responsibilities can be carried out under contract with appropriate private non-profit service providers.
7. “Independent Living Plan” means a written description of the programs and services which will help a child or young adult prepare for the transition from foster care to independent living as described in 42 U.S.C. § 675(1)(D) and Section 401(b) of this Sample Legislation.
8. “Juvenile court” means any court having dependency jurisdiction.
9. “Medical Condition” means a mental, physical, or emotional condition, including cognitive impairment or addiction.
10. “Supervised setting in which the individual lives independently” means a living arrangement, approved by the Department or an “independent living agency” where the individual lives independently, but in which he or she is provided supervision, case management and supportive services by the Department or “independent living agency” that offer

developmentally appropriate freedom and responsibility to prepare him or her for adulthood. To approve a setting the Department or “independent living agency” must ensure that:

- a. Young adults are provided with a level of supervision commensurate with their individual needs, as assessed by the Department or “independent living agency,” consistent with the young adult’s medical treatment plan, including physical, mental health, and substance abuse treatment plans; permanency plan and independent living goals. Less than 24 hour on-site supervision is permitted, however, 24 hour crisis intervention and support must be available.
 - b. All requirements related to the case plan as established in 42 U.S.C. § 675(1), including the transition plan, and the case review system established in 42 U.S.C. § 675(5) and its required continued pursuit of permanency consistent with the permanency goal, are satisfied and integrated with the goals of the supervised setting in which the individual lives independently.
 - c. Young adults living independently in supervised settings are offered, at a minimum, supportive services in: life skills instruction and counseling; educational support and progress; employment preparation and placement; development and maintenance of support networks, including family; health and wellness; and housing search and placement. The determination of what services will be provided and for how long will be based on the young adult’s assessed needs, interests, and input and will be consistent with the goals set in the young adult’s case plan. Acceptance of supportive services beyond those required in section 202 by the young adult shall not be considered a condition of eligibility for placement or continuation in a supervised setting in which the individual is living independently. Provision and delivery of supportive services shall be in coordination with the local Independent Living Program.
 - d. Approved living settings are in compliance with all state or local health and housing codes. Approved living settings do not have to be contracted with or in the legal control of the Department or independent living agency providing supervision, case management, or supportive services, however, responsibility for the young adult remains with the Department.
11. “Transition Plan” means a personalized plan developed at the direction of a child or young adult, with the assistance and support of a caseworker and, as appropriate, other representatives of the child or young adult as described at 42 U.S.C. § 675(5)(H) and Section 402 of this Sample Legislation.
12. “Young adult” means a child who has attained 18 years of age but who has not attained 21 years of age.

Commentary

Administrative Review

42 U.S.C. § 675(6) defines administrative reviews as open to the parents of the child. However, for a child age 18 or older, who is legally an adult, participation by the parents may not be appropriate. Balancing young adults’ status as legal adults with the importance of parents’ rights in a dependency case, the presumption should be that parents, guardians, or other caretakers should participate in “administrative reviews” or hearings consistent with federal or state law, but judges may exclude them when appropriate, including at the request of the young adult. Even though the federal definition of administrative review does not explicitly require the

participation of the child, because the law now extends foster care to individuals who are legal adults, those young adults should participate in all administrative reviews.

Child/Young Adult

To acknowledge that young people, whether in or out of foster care, are legal adults at age 18, “young adult” is used to refer to a youth between ages 18 and 21. The definition of “child” is retained because Fostering Connections only refers to a “child” to describe the population of individuals for whom the state may continue to provide care until age 21 and because, at times, a term encompassing both young adults as well as teenagers is necessary. In some cases, the term “child” is important in reflecting that a given provision applies or may apply to not only young adults but also to children under age 18. For example, the term “child” is used in Section 402 Transition Plan because the transition plan is required 90 days prior to the child/young adult leaving foster care. If a child chooses to exit care at age 18, this transition plan is still required and would be developed when he or she is 17. If a state chooses to extend care to age 21 and a young adult remains in care until that time, then the transition plan would be developed when the “young adult” is 20 years old. Even when the word “child” is used to include young adults, this in no way limits the federal or state rights individuals have as legal adults.

Medical Condition

The definition of “medical condition” clarifies the scope of impairments that can be considered when determining whether a young adult is incapable of fulfilling the requirement to engage in activities outlined in Fostering Connections codified at 42 U.S.C. § 675(8)(B). This definition eliminates potential confusion that a “medical condition” would only be interpreted as a physical health impairment, rather than also including the various behavioral health, developmental, and cognitive disabilities or impairments that can serve as barriers to consistent employment and education. Currently, there is no federal definition or interpretation of “medical condition,” but consistent with providing all children and young adults the services and supports needed for a successful transition to adulthood, states are encouraged to define the term broadly. It is also important that steps be taken to help these young adults move towards independence while in care.

Supervised Setting in which the Individual Lives Independently

Fostering Connections requires Department of Health and Human Services (HHS) to issue regulations defining “supervised setting in which the individual lives independently” for purposes of Title IV-E. As of June 23, 2010, regulations have not been issued. The definition provided here was informed by existing effective programs and is intended to allow for a continuum of options that meet the needs of young adults at different developmental phases. This definition may need to be modified once regulations are published.

ARTICLE 2. EXTENSION OF CARE

SECTION 201. ADOPTION AND GUARDIANSHIP ASSISTANCE SHALL BE EXTENDED TO AGE 21 FOR ELIGIBLE YOUNG ADULTS

With respect to a young adult for whom an adoption assistance or kinship guardianship agreement is executed after the young adult attained 16 years of age or older, the Department

shall continue making adoption and guardianship assistance payments on behalf of that young adult until age 21.

Commentary

Fostering Connections allows states to extend Title IV-E foster care, adoption assistance, kinship guardianship assistance or any combination of the three to age 19, 20 or 21 for Title IV-E eligible young adults. This sample legislation extends foster care, adoption and kinship guardianship assistance to age 21 for all young adults, regardless of Title IV-E eligibility.

State Considerations about Extending Kinship Guardianship and Adoption Assistance Unlike the Title IV-E eligibility requirements for “foster care maintenance payments,” which include continued agency obligations and court review, continuing adoption and kinship guardianship assistance to young adults does not add any additional obligations or responsibilities on the Department or court. These young adults have reached permanency, and their dependency case is already, or should be, closed.

The opportunity to extend adoption and kinship guardianship assistance under Fostering Connections complements the option states have long had to extend adoption assistance to age 21 for young adults with mental or physical disabilities. While this section discusses the provision of Fostering Connections that allows states to extend adoption and kinship guardianship assistance to young adults age 18 and older, nothing in Fostering Connections alters the ability of states to extend IV-E adoption assistance to young adults with mental or physical disabilities. Effective October 1, 2010, states may now also extend kinship guardianship assistance to young adults with mental or physical disabilities to age 21 regardless of when guardianship began or whether that state decides to extend kinship guardianship assistance to youth exiting to guardianship at age 16 or older.

Under Fostering Connections, states can choose to extend only foster care for young adults age 18 and older but that may provide a disincentive to move children to permanent families from foster care. States can remove that disincentive by also extending kinship guardianship assistance and adoption assistance for young adults to age 19, 20, or 21, provided they exited from foster care at age 16 or older. Extending all three types of assistance allows young adults to pursue the most appropriate permanency option without having to make the difficult choice between permanency and receiving needed supports.

In extending kinship guardianship assistance, states may need to review their guardianship laws to determine whether amendments are needed. To ensure that children who exit to guardianship at age 16 or older can continue assistance after age 18, there must be a procedure in state law to allow kinship guardianship assistance beyond age 18. This procedure should recognize these young adults as adults with legal rights of their own but also recognize the need for continued support.

Elimination of Income Eligibility Requirements for Title IV-E Adoption Assistance

This sample legislation extends support to the age of 21 for all young adults who exited foster care to adoption or kinship guardianship after attaining age 16 regardless of IV-E eligibility.

Fostering Connections eliminates, on a phased-out basis, all income and resource requirements associated with eligibility for IV-E adoption assistance, including those established as part of Aid to Families with Dependent Children (AFDC). Thus states choosing to extend adoption assistance to all youth who exit foster care at age 16 or older can expect many of those costs to be eligible for IV-E reimbursement. The phase-out began October 1, 2009 with any child age 16 or older or who has spent at least 60 consecutive months in care at the time his or her adoption assistance agreement is finalized. Siblings of these children are also immediately eligible.

SECTION 202. FOSTER CARE SHALL BE EXTENDED TO AGE 21

1. Unless care and responsibility are terminated pursuant to Sections 203 or 204, the Department shall retain care and responsibility for a young adult in foster care between the ages of 18 and 21 if that young adult is:
 - a. Completing secondary education or a program leading to an equivalent credential;
 - b. Enrolled in an institution which provides post-secondary or vocational education;
 - c. Participating in a program or activity designed to promote, or remove barriers to, employment;
 - d. Employed for at least 80 hours per month; or
 - e. Incapable of doing any of the activities described in subclauses a. through d. due to a medical condition, which incapability is supported by regularly updated information in the case plan of the young adult.
2. A juvenile court shall, except as provided in Sections 203 and 204, retain jurisdiction over a young adult in foster care between ages of 18 and 21 if the court assumed jurisdiction over the young adult before his or her 18th birthday.
3. Nothing in this statute shall abrogate any responsibilities of the Department or the court on behalf of the young adult, including the protections required under Section 303, or responsibilities of the young adult under state or federal law or regulation.

Commentary

Fostering Connections allows states to extend Title IV-E foster care, adoption assistance, kinship guardianship assistance or any combination of the three to age 19, 20 or 21 for Title IV-E eligible young adults. This sample legislation extends foster care, adoption and kinship guardianship assistance to age 21 for all young adults, regardless of Title IV-E eligibility.

IV-E Eligibility

While this sample legislation extends care to all young adults to age 21, regardless of Title IV-E eligibility, under Fostering Connections only those children who meet Title IV-E eligibility criteria can be supported with Title IV-E dollars. States that extend care and support to young adults who are not IV-E eligible will have to do so with state, local or other federal dollars. A number of states already provide some measure of services and supports to young adults in, or who had been in, foster care beyond age 18.

If states choose to extend federal support for young adults age 18 and older under Fostering Connections, the young adults must meet the eligibility criteria that apply to all children in foster care under 42 U.S.C. § 472, and also be engaged in one of the IV-E eligibility criteria listed in Section 202 (1)(a-e). Fostering Connections does not further clarify what “program or activity

designed to promote, or remove barriers to, employment” means. In the absence of specific federal guidance on the interpretation of this provision, states should consider including at least mental health and substance abuse treatment programs, services and supports to address domestic violence, job training activities, activities to obtain or stabilize housing or child care, English as a Second Language (ESL) instructional programs, and activities designed to eliminate legal barriers to work, keeping in mind that barriers vary based on the individual needs and circumstances of the young adult. In addition, for a child or young adult to be IV-E eligible, he or she must be living in a IV-E reimbursable placement setting, which means a foster home or child care institution, including, for young adults, a “supervised setting in which the individual lives independently.”

Once the state decides to extend assistance to young adults age 18 and older, the state is obligated to serve all who are Title IV-E eligible and are participating in one of the activities above or excused from participating because of a medical condition. A state cannot pick and choose among these five categories and decide, for example, that it will only support young adults who are completing postsecondary education, but not those who are working. States do, however, have the option under Fostering Connections to limit eligibility based on age (i.e. only to young adults to age 19 or 20). Some states already use state and local funds to extend care for all young adults in foster care or all who are eligible for adoption assistance or guardianship assistance to age 21,¹¹ though many of these states will have to make changes to their programs to qualify for federal support.

Extension of Court Jurisdiction

If a state opts to extend care for young adults age 18 and older as part of their Title IV-E state plan, all of the requirements of Title IV-E apply to young adults in foster care, including court oversight. This includes requirements such as holding a permanency review hearing at least once a year at which the court must make findings regarding whether reasonable efforts were made to finalize the permanency plan and what services were needed for a child age 16 or older to transition from foster care to independence. The court or administrative body must also review the child’s case plan at least once every 6 months. These hearings and reviews, coupled with transition planning efforts (described in Sections 401(b) and 402), help ensure that youth have supports, services, and permanent families or, at least, permanent connections to appropriate adults when they leave care.

Because of the need for court hearings and reviews as a mandatory element for federal IV-E reimbursement, it will be necessary for states to extend court jurisdiction for young adults age 18 and older.¹² While some states already allow for continued court jurisdiction beyond age 18 by

¹¹ See, e.g., California, Florida, New York, Washington, D.C., Illinois, and Pennsylvania.

¹² In addition to being required by law, research has shown that continued court oversight for youth who stay in care past age 18 is correlated with positive outcomes for older youth in care. Research also demonstrates that strong client representation and active youth involvement in court are critical. See e.g., Clark Peters, et al., Continuing in Foster Care Past Age 18: How Courts Can Help (Chapin Hall Issue Brief July 2008), located at <http://www.chapinhall.org/sites/default/files/publications/Beyond%2018%20Issue%20Brief%20redesign%2002-04-09.pdf> (demonstrating the importance of court advocacy and oversight in availability of placements and services, involvement of caseworkers and older adults and a more positive attitude about remaining in care beyond age 18).

court rule or statute,¹³ many states will need to extend court jurisdiction to meet *Fostering Connections*'s requirements.

SECTION 203. TERMINATION OF CARE—GENERAL PROVISIONS

1. The extended jurisdiction of the court and continued care and responsibilities of the Department provided for in Section 202 terminate on the earliest of:
 - a. The date the young adult knowingly and voluntarily withdraws consent as set forth in Section 204;
 - b. The young adult exits foster care to a permanent home consistent with his or her permanency plan; or
 - c. The young adult's 21st birthday.
2. Notwithstanding the foregoing, the court shall not terminate its jurisdiction until it finds, following a hearing held after notice to all parties, that:
 - a. The Department has complied with the provisions of Section 402; or
 - b. The young adult has attained the age of 21 and despite ongoing reasonable efforts on the part of the Department to provide him or her services and inform him or her of the right to remain in care beyond age 18, the young adult has not participated in the development of the Transition Plan under Section 402.

Commentary

Fostering Connections does not include a mechanism for terminating care. This sample legislation offers an approach that fully recognizes the rights of the young adult as a legal adult.

This provision makes clear that, while a young adult may at any time withdraw his or her consent to extended court jurisdiction and continued care and responsibility by the Department pursuant to Section 204, a young adult should otherwise only be discharged from the system to an arrangement where they have permanency, are safe, and will have their needs met (see Sections 401 and 402 for additional information about the need for accountability in discharge planning). Discharge from the system should be contingent on the achievement of outcomes rather than age. The option for young adults to remain in care until age 21 allows more time to achieve permanency.

This Section also emphasizes the importance of respecting the autonomy and legal rights of young adults. If, after weighing all their options and understanding the consequences of their decision, a young adult decides to leave the system, that decision must be respected.

SECTION 204. VOLUNTARY TERMINATION OF CARE

1. If the young adult withdraws consent to extended court jurisdiction and continued care and responsibility by the Department under Section 202, a court hearing must be held before court jurisdiction can be terminated and before the Department may close its case.

¹³ For complete list, please see <http://www.childwelfarepolicy.org/pages/map.cfm?id=347&tab=&curtab=&state=#jump347>.

2. At the hearing, the following criteria must be met before court jurisdiction can be terminated and before the Department may close its case:
 - a. Attendance of the young adult's attorney at the hearing; and
 - b. Attendance of the young adult at the hearing; or
 - c. Findings by the court that:
 - i. The young adult has been informed by his or her attorney of his or her right to attend the hearing and has provided written consent to waive this right;
 - ii. The young adult has been informed of the potential negative effects of terminating care early, the option to re-enter care before reaching age 21, the procedure and limitations on re-entering care, the availability of aftercare services, and that the young adult has signed a document attesting that he or she has been so informed and understands these provisions, and
 - iii. The Department has complied with Section 402.
3. All provisions under Section 304 shall apply to hearings under this Section.

Commentary

Fostering Connections does not include a mechanism for voluntary termination of care. Acknowledging young adults' rights as legal adults, this sample legislation details an approach that balances those rights with important protections.

This Section specifies criteria for ensuring that, when a young adult withdraws consent to remain in care before turning 21, that the decision is truly knowing and voluntary. Several states require that a hearing be held before terminating jurisdiction of a young adult's case. By requiring the young adult's attendance at the hearing to terminate jurisdiction and assuring the right to legal counsel, the young adult is provided clear and specific information about his or her choice so that he or she can better plan for the future. If a young adult gives up an important legal right, necessary protections must be in place to ensure that the decision is as informed as possible. This section also ensures that a young adult who does withdraw his or her consent is fully apprised of options to re-enter care or receive other aftercare services.

SECTION 205. OPPORTUNITY TO RE-ENTER CARE

1. A young adult who exited foster care at or after reaching his or her 18th birthday, but before reaching age 21, may petition the court to resume dependency jurisdiction and the Department to re-open its case. The court shall resume jurisdiction and the Department shall re-open the case if the young adult is engaged in the activities described in Section 202(1).
2. The Department shall create a clear and developmentally-appropriate notice discussing the rights of young adults' who were formerly in foster care to services under this sample legislation. The notice shall include information about what services they will be eligible for and how such services may be obtained. The Department shall disseminate this information to all young adults in foster care at their last court review before exiting care as described in Section 302 and at the hearing on their petition to resume dependency jurisdiction as described in this section.

Commentary

Fostering Connections does not include a mechanism for re-entry into foster care after age 18. As a result, it appears that when a young adult age 18 or older leaves care and court jurisdiction is terminated they cannot later be Title IV-E eligible. This sample legislation allows young adults exiting care after age 18 to re-enter and resume court jurisdiction, though the state may not be able to obtain Title IV-E reimbursement on their behalf.

Many States Provide Some Support to Young Adults after Discharge

A number of states already permit young adults age 18 or over to obtain some measure of services and supports after they leave foster care by law or policy. Many of the states that offer young adults services and supports that would be associated with re-entering care do so through an agency administrative process that does not involve the court.¹⁴ Alternatively, some states allow for a full re-entry by resuming responsibility for care and placement of the young adult and providing all associated services and supports, including court oversight¹⁵. Fostering Connections does not interfere with these state laws or policies. However, for young adults to remain eligible for Title IV-E and, therefore, for the state to claim federal reimbursement for a young adult's care, they must meet all Title IV-E requirements including original removal from an income eligible home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in that home would be contrary to the welfare of the child.

Allowing Young Adults to Re-enter Care Provides a Safety Net

A policy that allows young adults to re-enter care after age 18 provide these young adults a safety net that is similar to that provided to young adults who grow up in their own families and are able to return home when they need assistance or moral support. Young adults raised in families often have the luxury of returning home well past age 21. This same privilege should be available to young adults in foster care at least until age 21.

Maintaining IV-E Eligibility for Youth Who Want to Live Independently

The Department may want to keep a young adult's case open to maintain IV-E eligibility, even though the young adult wishes to live independently. The Department may be able to keep a case open by allowing a trial discharge from care or crafting some other mechanism to maintain ongoing agency and court jurisdiction even while the youth is living independently with supervision or services.¹⁶ Absent some mechanism for keeping a case open, states seeking to

¹⁴ See, e.g., Connecticut Department of Children and Families, Policy Manual, Adolescent Services, Re-Entry to Adolescent Services, 42-20-50 at: <http://www.ct.gov/dcf/cwp/view.asp?a=2639&Q=327788>; Arizona Department of Economic Security, Reentry into Voluntary Foster Care at: <https://www.azdes.gov/main.aspx?menu=150&id=1774>.

¹⁵ See, e.g., 18 N.Y.A.D.C. § 430.12(1); 705 I.L.C.S. § 405/2-33; A.C.A. § 9-27-306(a)(1)(B)(ii)

¹⁶ On April 6, 2010, the Children's Bureau issued ACYF-CB-PIQ-85-06 that included guidance related to continued IV-E eligibility when a youth resumes care after a "break in placement" such as when a child in foster care exits care either through a trial home visit or through a discharge, and then later re-enters care. The guidance states that "the criteria in determining whether re-establishing a children's eligibility for foster care maintenance payments under title IV-E hinges on whether the child is continuously in foster care status and remains under the responsibility of the [agency] for placement and care." To make this determination, the agency must ask: "(1) Is the child in foster care? (2) Is the original court order or voluntary placement agreement still in effect in relation to removal of the child from his home? (3) Is the child still under the responsibility of the [agency] for placement and care?" Per the guidance, if

support young adults who exit care and then want to re-enter may be unable to receive federal IV-E funding reimbursements. Maintaining young adults' IV-E eligibility is critical to their receiving federal support and the protections under Title IV-E.

ARTICLE 3. COURT SUPERVISION

SECTION 301. LEGAL REPRESENTATION AND CASA ADVOCACY FOR THE YOUNG ADULT IN HIS OR HER DEPENDENCY CASE

1. All young adults shall be appointed an attorney who has received training appropriate to the role, and who has adequate time and resources to provide effective legal representation in the proceeding.
2. The attorney's representation of the young adult shall be client directed, and the attorney shall be bound by the state's Rules of Professional Responsibility.
3. The attorney shall protect the young adult's legal rights and vigorously advocate for the young adult's wishes and goals, including assisting the young adult as necessary to ensure that the young adult receives the services required under this sample legislation.
4. For young adults who were appointed a guardian *ad litem* (GAL) attorney before age 18, appointment may be continued but under a client directed model of representation.
5. If the young adult re-enters care under Section 204 and does not have an attorney, the court shall appoint one for the young adult.
6. In addition, the judge has discretion to appoint a court appointed special advocate (CASA volunteer), or continue the appointment of a CASA volunteer, with the young adult's consent.

Commentary

Fostering Connections is silent on a young adult's right to legal representation in his or her own dependency case. This sample legislation requires young adults to be represented by an attorney upon reaching age 18.

each of these criteria is met, then IV-E eligibility would not need to be re-established. This guidance is consistent with the sample legislation that suggests that a young adult's child welfare case and court case must remain open to continue IV-E eligibility. The guidance later explains that if a child is *discharged* to the home from which he was removed, even if ongoing agency services continue, then he would not be in foster care status. However, "short trial visits" to his home or to the home of a relative would not be considered interruptions in foster care status. Additionally, previous regulations indicate that the state may continue IV-E eligibility of a child, without a re-determination, as long as the trial home visit does "not exceed six months in duration, unless a court orders a longer trial home visit." If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required. 45 C.F.R. 1356.21 (e). Read together, the new guidance and previous regulations seem to hold out the possibility that a young adult could agree to a trial discharge of less than 6 months, or longer by court order, which could facilitate the continuation of IV-E eligibility of a formerly IV-E eligible youth who resumes care. Of course, as the new guidance also makes clear, federal financial participation is only allowed during the time a child or young adult is in a licensed or approved foster care facility, which may include a supervised setting in which a child is living independently.

Need for Legal Representation

Children and young adults in care value having an advocate involved in their case to speak up for their needs in court, the dependency system and in the community. By acknowledging the importance of participation in every aspect of their case and planning, Fostering Connections reinforces the role of the advocate in helping children and young adults develop self advocacy skills. Attorney representation is essential for young adults to ensure that their legal rights as adults are being met, and that they are receiving the services and supports they critically need for a successful transition to adulthood. An attorney appointed to represent a young adult's wishes is obligated to zealously advocate on behalf of his or her client. In addition to establishing a trusting relationship with the client, the attorney must provide the young adult all confidentiality protections typical of an attorney-client relationship except in very limited circumstances. The attorney appointed to represent the young adult's wishes also acts as his or her voice in court.

Using a Client-Directed Model of Representation

The GAL or "best interests" model of representation for attorneys cannot be reconciled with the representation of adult clients. In the case where a state requires the attorney to act as a "best interests" advocate or GAL, legal ethics rules require that the manner of representation should change to client-directed when the child becomes a legal adult. The attorney should focus on ensuring that the young adult receives services and supports he or she wants and on providing the young adult with good counsel about his or her options, advocating for his or her legal interests, and preserving confidentiality. Importantly, the attorney will also support the young adult's attendance and participation in court by preparing him or her beforehand and debriefing him or her afterwards. States may find that ensuring a young adult's right to client-directed legal representation may best be accomplished through the amendment of court rules or state statute.

Standards on Effective Advocacy

Especially for this vulnerable population of young adults, effective legal representation by a well-trained attorney with adequate time and resources is essential. For purposes of this section, an attorney who "has adequate time and resources" means that the attorney does not have an excessive caseload size or other responsibilities rendering him or her unable to meet his or her obligations as the child's lawyer pursuant to standards of practice promulgated by the American Bar Association and the National Association of Counsel for Children. It also means that the attorney receives reasonable and appropriate compensation for his or her time and efforts as well as expenses in connection with that representation. Furthermore, adequate and appropriate training means training that comports with recommendations in standards promulgated by the American Bar Association, the National Association of Counsel for Children, and the National Court Appointed Special Advocate Association. Fostering Connections expands the use of federal Title IV-E training funds to include training of court personnel including judges, attorneys for parents and children, court appointed special advocates, and guardians ad litem. Training for these groups will be reimbursed in FY 2010 at a 60% match and will continue to increase annually, reaching the maximum of 75% in 2013 and beyond.

CASA Advocacy

Many young adults are appointed a court appointed special advocate (CASA volunteer) before turning 18 to represent their best interests. CASA volunteers can effectively support young adults and form close relationships with them and their relatives. They can also advocate for young adults in the community, with service providers, with educational systems, with employers, and with those other individuals who play an important role in the young person's life. CASA volunteers can provide important advice to young adults. They may continue to discover new information and alternative options, help the young adult weigh those options, better understand what else is going on in the system around them, and help make sure their transition plan is progressing as the young adult wants and expects. Furthermore, and most importantly, a CASA volunteer may provide a critical permanent adult connection for the young adult. Therefore, it is important that, if a young adult consents to the continued involvement or new appointment of a CASA volunteer, that the court be given clear authority to make and continue such appointments.

SECTION 302. LAST COURT REVIEW PRIOR TO CHILD TURNING 18

1. During the last review hearing before the child turns 18, the court shall:
 - a. Address whether the child plans to remain in foster care, and if so, ensure the child's transition plan includes a plan for meeting one or more of the criteria listed in Section 202(1); and
 - b. Ensure the child has been informed of:
 - i. The right to request termination of dependency jurisdiction and discharge from the Department's care;
 - ii. The right to continued services, which include the Department's obligations under Sections 202, 401 and 402; and
 - iii. The opportunity to re-enter care in accordance with Section 205.
 - c. If the young adult requests termination of dependency jurisdiction and discharge from the Department's care, the court shall ensure the young adult has been informed of:
 - i. Any services or benefits for which the young adult may be eligible based on being formerly in the care and custody of the Department including, but not limited to, services or benefits available under the Chafee Foster Care Independence Act, 42 U.S.C. § 677;
 - ii. Any services or benefits that may be lost through termination of dependency jurisdiction; and
 - iii. Any other federal, state, local, tribal or community-based services or supports available to the child.

Commentary

Fostering Connections does not articulate any unique requirements for the last court review prior to a child turning 18. This sample legislation provides an approach that helps ensure that the child is fully informed of the available options to them after attaining age 18 and that the child is fully engaged in planning for the future.

To make the most of the federal support available under Fostering Connections on behalf of young adults who remain in care, states should, during the last review hearing before the child

turns 18, ensure that the child's transition plan includes a plan for him or her to meet one or more of the criteria listed in Section 202(1).

SECTION 303. PERIODIC REVIEWS FOR YOUNG ADULTS

With respect to any young adult who receives continued care from the Department at or after age 18 under Sections 202 and/or 205, the state shall ensure that:

1. A case review system is in place that includes:
 - a. Judicial findings regarding:
 - i. The status of the issues described in 42 U.S.C. § 675 (5)(A), (D), (E), (G) and (H); and
 - ii. Whether reasonable efforts have been made to place siblings together unless the state documents that such a joint placement would be contrary to the safety and well being of any of the siblings, and in the case of siblings who are not jointly placed, a detailed plan for how ongoing frequent visitation or interaction will be achieved unless it is found that frequent visitation or interaction would be contrary to the safety and well being of any of the siblings.
 - b. The frequency and mechanism for review described in 42 U.S.C. § 675 (5)(B),
 - c. The procedural protections described in 42 U.S.C. § 675 (5)(C), including that in all permanency hearings or hearings regarding the transition of the young adult from foster care to independent living, that the court or administrative body consults, in an age-appropriate manner, with the young adult regarding the proposed permanency or transition plan for the young adult; and
 - d. Any other procedural protections that apply to children under 18 under existing state or tribal law.
2. The court maintains oversight to ensure the Department is coordinating with the appropriate agencies, and, as otherwise permitted, maintains oversight of other agencies involved in implementing the young adult's case plan, including the independent living plan and, when applicable, the transition plan.
3. The Department prepares and presents to the court a report, developed in collaboration with the young adult, addressing the young adult's progress in meeting the goals in the case plan, including the independent living plan and transition plan, when applicable, and shall propose modifications as necessary to further those goals.
4. The court determines whether the Department and any service provider under contract with the Department is providing the appropriate services as provided in the case plan including the independent living plan, and when applicable, the transition plan.
 - i. If the court believes that the young adult is entitled to additional services to achieve the goals enumerated in the case plan, under the Department's policies, or under a contract with a service provider, the court may order the Department to take action to ensure that the young adult receives the identified services.
5. The young adult or any other party to the dependency case can request an additional hearing or review.

Commentary

By virtue of extending care for young adults beyond age 18, Fostering Connections requires the same protections, including periodic court reviews, for all children and young adults in

care. Fostering Connections does not articulate any additional details about these periodic reviews for young adults. This sample legislation offers important details that take into account the unique needs of young adults.

Judicial Findings in Key Areas

If a state opts to extend care for young adults age 18 and older, all of the court related requirements of Title IV-E apply, including all of the protections guaranteed as part of the case review system defined in 42 U.S.C. § 675(5). While Fostering Connections requires continued judicial oversight of young adults' cases, this sample legislation goes beyond it by requiring judicial findings in a number of key areas for which the Department is already held responsible. States should consider requiring these same judicial findings for all children in care.

Importance of Periodic Reviews

In addition to assuring compliance with the law, periodic reviews can help the young adult achieve his or her independent living and permanency planning goals through court oversight of established goals and services provided. Active engagement of the young adult as well as all parties will ensure accountability and forward movement in the case.

Maintaining Family Connections

Section 303(1)(a)(ii) embeds in court practice the Fostering Connections requirement related to sibling placement and visitation or other frequent ongoing contact. It does so to further promote accountability and ensure older children and young adults experience the benefits of these provisions in their efforts to achieve permanency. Likewise, identifying and notifying relatives, as is required under Fostering Connections within the first 30 days of a child or youth's removal from his or her parents, may continue to be helpful in maintaining a young adult's connection to his or her family and in the pursuit of permanency even after the required 30 days.

SECTION 304. RIGHTS OF THE YOUNG ADULT

1. Nothing in this sample legislation shall be construed to abrogate any other rights that a person, who has attained 18 years of age, may have as an adult under state law.
2. Young adults have a right to:
 - a. Receive notice of case and permanency plan meetings, team decision-making meetings, administrative reviews, court hearings, and any other case-related proceedings or meetings;
 - b. Be involved in the development of a personalized transition plan as described in Section 402;
 - c. Be present and address the court;
 - d. Legal representation as described in Section 302; and
 - e. Any other privileges afforded to parties to dependency proceedings under state or tribal law.
3. If the young adult is not present at any hearing, the court shall make a finding as to whether the young adult was given notice and made an informed decision not to attend, in order to proceed with the hearing, or postpone the hearing until the young adult may attend.

Commentary

Implicit in Fostering Connections is the fact that the federal law does not take away young adults' legal rights once they turn 18. This sample legislation makes explicit that continuing in foster care does not abrogate any of young adult's rights and, because of their adult status, makes them parties to ongoing court proceedings, if they were not already, and ensures their participation in planning for the future.

Continuing in care as an adult presents unique, but manageable challenges to a system accustomed to the care of "children." While the dependency system is designed to protect children and support families, a system that allows for ongoing care and supervision of legal adults must reflect a new focus on young adults' rights. Remaining in care after turning 18 should not affect the rights that all individuals gain when they become legal adults. This is similarly true for young adults 18 and older who remain in the home of their parents—the parent can establish some conditions for the young adult to remain in the home, but the parent cannot usurp the young adult's rights to, for example, consent to their own medical care or make their own educational decisions. This Section emphasizes this concept in the realm of court procedures and permanency reviews as well as in the service system.

ARTICLE 4. PROGRAM STRUCTURE

SECTION 401. SERVICES THAT SHALL BE PROVIDED TO THE YOUNG ADULT

1. The Department shall revise the written case plan for each young adult in foster care, after consultation with the young adult to ensure it includes at least the following:
 - a. A description of the type of foster family home, institution or "supervised setting in which the individual lives independently," in which a young adult is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the young adult plans to carry out the voluntary placement agreement entered into, or judicial determination made, with respect to the young adult in accordance with 42 U.S.C. § 672(a)(1) and
 - b. A plan for assuring that the young adult receives safe and proper care and that services are provided to the young adult, parents, and foster parents in order to improve the conditions in the parents' home, facilitate return of the young adult to his own safe home or the permanent placement of the young adult, and address the needs of the young adult while in foster care, including a discussion of the appropriateness of the services that have been provided to the young adult under the plan.
 - c. Documentation of the reasonable efforts that have been made to place siblings together, or documentation that such a joint placement would be contrary to the safety and well being of any of the siblings; and in the case of siblings who are not jointly placed, a detailed plan for how ongoing frequent visitation or interaction will be achieved or documentation that frequent visitation or interaction would be contrary to the safety and well being of any of the siblings. This documentation shall be updated in accordance with the review and updating of the case plan.
 - d. The health and education records of the young adult, including the most recent information available regarding:
 - i. The names and addresses of the young adult's health and educational providers;

- ii. The young adult's grade level performance;
 - iii. The young adult's school record;
 - iv. A record of the young adult's immunizations;
 - v. The young adult's known medical problems;
 - vi. The young adult's medications; and
 - vii. Any other relevant health and education information concerning the young adult determined to be appropriate by the Department.
- e. A written description of the programs and services that will help the young adult prepare for the transition from foster care to independent living, including, but not limited to, documentation that assistance has been provided to:
- i. Complete applications for health insurance, including applications for Medicaid;
 - ii. Obtain referrals for, apply for, and obtain safe, stable, and age appropriate housing;
 - iii. Maintain relationships with individuals who are important to the young adult, including searching for individuals with whom the young adult has lost contact;
 - iv. Access information about maternal and paternal relatives including any siblings, unless contrary to the safety and well-being of the young adult;
 - v. Obtain employment or other financial support;
 - vi. Obtain a government issued identification card;
 - vii. Open and maintain a bank account;
 - viii. Obtain appropriate community services and programs including health, mental health, developmental disability, and other disability services and supports; and, where appropriate:
 - ix. Satisfy any juvenile justice system requirements and assist with expunging the young adult's juvenile's record;
 - x. Complete secondary education;
 - xi. Apply for admission and aid for postsecondary educational or vocational programs;
 - xii. Obtain the necessary state court findings and then apply for Special Immigrant Juvenile Status, or apply for other immigration relief that they may be eligible for, including achievement of citizenship status;
 - xiii. Create a health care power of attorney as required by P.L. 111-148;
 - xiv. Apply for any public benefits or benefits that he or she may be eligible for or may be due through his or her parents or relatives, including but not limited to TANF, SSI, SSDI, Survivor's Benefits, WIC, Food Stamps, LIHEAP; and, if applicable,
 - xv. Assist with applying for a legal name change.
- f. In the case of a young adult whose permanency plan is adoption or placement in another permanent home, documentation of the steps the Department is taking to find an adoptive family or other permanent living arrangement for the young adult to place him or her with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include young adult-specific recruitment efforts such as the use of State, regional and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-state or interstate placements and intensive family finding efforts designed to facilitate connections with adult relatives or others with a significant relationship to the young adult.

- g. In the case of a young adult with respect to whom the permanency plan is placement with a relative and receipt of kinship guardianship assistance payments under 42 U.S.C. § 673(d), a description of:
 - i. The steps that the agency has taken to determine that it is not appropriate for the young adult to be returned home or adopted;
 - ii. The reasons for any separation of siblings during placement;
 - iii. The reasons why a permanent placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the young adult’s best interests;
 - iv. The ways in which the young adult meets the eligibility requirements for a kinship guardianship assistance payment;
 - v. The efforts the agency has made to discuss adoption by the young adult’s relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefore; and the efforts made by the Department to discuss with the young adult’s parent or parents the kinship guardianship assistance arrangement, or the reasons why those efforts were not made.
- h. A plan for ensuring the educational stability of the young adult while in foster care, including:
 - i. Assurances that the placement of the young adult in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the young adult is enrolled at the time of placement; and
 - ii. If the young adult has not completed secondary education, an assurance that the Department has coordinated with appropriate local educational agencies (as defined under section 9101 of the Elementary and Secondary Education Act of 1965) to ensure that the young adult remains in the school in which the young adult is enrolled at the time of placement; or
 - a. If remaining in such school is not in the best interests of the young adult, assurances by the Department and local educational agencies that they will provide immediate and appropriate enrollment in a new school, with all of the educational records of the young adult provided to that school.

Commentary

Fostering Connections extends to young adults all of the protections that are afforded to younger children. These include the development of a case plan consistent with 42 U.S.C. § 675 (1). This sample legislation provides additional detail in a few key areas to incorporate other requirements under Fostering Connections and to better accommodate the needs of young adults.

All children in foster care are entitled to certain protections under Title IV-E including a case plan. If a state chooses to extend care to young adults, they must be afforded these same protections. This section is taken verbatim from the definition of “case plan” at 42 U.S.C. § 675(1) except in a few areas. In Section 401(a), the reference to “supervised setting in which the individual lives independently” is added to reflect that such placements will be Title IV-E reimbursable beginning October 1, 2010 pursuant to Fostering Connections. Section 401(e) includes the federal requirement for the independent living plan described at 42 U.S.C.

675(1)(D), but additional detail is provided to assist states in developing independent living plans that are responsive to the unique needs of young adults. To make the most of the federal support available on behalf of young adults in care, states may also wish to assist the young adult in engaging in one of the Title IV-E required activities listed in Section 202(1). Finally, Section 401(c) integrates the new Title IV-E state plan requirements of Fostering Connections regarding sibling placement to help states demonstrate compliance with these provisions.

SECTION 402. TRANSITION PLAN

During the 90-day period immediately prior to the date on which the young adult in foster care will attain 21 years of age, or the date on which a child or young adult will exit foster care pursuant to Section 203 or 204, whether during that period foster care maintenance payments are being made on the child or young adult's behalf, or the child or young adult is receiving benefits or services under 42 U.S.C. § 677, a caseworker on the staff of the Department shall:

1. In collaboration with, as appropriate, other representatives of the child or young adult, provide the child or young adult with assistance and support in developing a transition plan that is personalized at the direction of the child or young adult, and that includes specific options for the child or young adult on housing, health insurance, education, local opportunities for mentors and continuing support services, work force supports and employment services, and that assists the child or young adult in applying for Special Immigrant Juvenile Status or other appropriate immigration relief and citizenship status, if necessary, and that this plan is as detailed as the child or young adult may elect and ensures that the child or young adult has permanent adult connections;
2. Provide the child or young adult with the following documentation:
 - a. Copy of the child's or young adult's credit report;
 - b. Copy of the child's or young adult's social security card;
 - c. Certified copy of the child's or young adult's birth certificate;
 - d. Copy of the child's or young adult's driver's license or government issued ID card;
 - e. Letter including the dates that the child or young adult was within jurisdiction of the court;
 - f. Letter including a statement that the child or young adult was in foster care, in compliance with financial aid documentation requirements;
 - g. The child's or young adult's entire educational records, obtained through a court order if necessary;
 - h. The child's or young adult's entire health and mental health records, obtained through a court order if necessary;
 - i. Documentation of the child's or young adult's health insurance or Medicaid;
 - j. Documentation of a health power of attorney for the child or young adult;
 - k. Proof of the child's or young adult's citizenship or legal residency;
 - l. Clear and age appropriate written instructions on filing a petition for the child or young adult to re-enter care, including a completed sample petition; and
 - m. The process for accessing their case file, and where applicable:
 - n. Death certificates of the child's or young adult's parents; and
 - o. Termination of Parental Rights orders.
3. Coordinate with appropriate local public and private agencies in designing the Transition Plan.

4. Coordinate the Transition Plan with any other appropriate plans, including but not limited to the Independent Living Plan (as described at 42 U.S.C. § 675(1)(D) and Section 401(b) of this sample legislation), and an Individuals with Disabilities Education Act transition plan (as described at 34 CFR § 300.347).
5. Amend and update the Transition Plan for any young adult re-entering care under Section 205.

Commentary

Fostering Connections requires that a transition plan be developed 90 days before a child or young adult exits foster care. The plan must be personalized at the direction of the child or young adult and include specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employments services. This sample legislation includes additional detail on other important elements that should be included in a transition plan and how the Department should support the child or young adult in developing this plan.

Mandatory Transition Plans

Fostering Connections created a mandatory requirement that, as part of the case review system, the Department must ensure that a transition plan is developed for the child or young adult before they exit care. While the transition plan must be personalized at the direction of the child or young adult, the creation of a transition plan is mandatory and there are important steps states can take beyond what is required by Fostering Connections to ensure that a realistic and viable plan is developed.

Providing Children and Young Adults Key Documentation

States are encouraged to provide children and young adults with key documentation to assist them in their planning process. These documents are often critical to obtaining necessary services and accessing opportunities in adulthood – from purchasing a car to receiving medical attention to applying for employment. Children or young adults with special needs who will need to apply for SSI or supportive housing or services will be required to submit these identification documents as well as medical and other records. For children and young adults in foster care – particularly those who experienced multiple placements – these records may be difficult to locate and obtain. To execute their transition plan successfully, children and young adults should be provided with documentation that is critical to their efforts. Also to help children and young adults transition successfully, states are encouraged to coordinate the transition plan described in this Section with other transition plans and the independent living plan described in Section 401(e).

APPENDIX A

Eligibility Requirements for Title IV-E

Eligibility requirements for young adults in Title IV-E foster care - States have the option to amend their Title IV-E state plans and, if the state plan amendments are approved, states may claim federal funds for young adults in foster care beyond their 18th birthday to the age of 19, 20, or 21 beginning on October 1, 2010. With limited exceptions, states can currently only claim federal assistance for children and youth up to their 18th birthday. States will only be federally reimbursed for those young adults in foster care eligible for IV-E maintenance payments. These eligibility criteria include removal from an income-eligible home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child, being under the placement and care of the child welfare agency, and placement in a licensed foster family home or child-care institution, and who are:

- Completing secondary education or in a program leading to an equivalent credential
- Enrolled in an institution that provides post-secondary or vocational education
- Participating in a program or activity designed to promote, or remove barriers to, employment
- Employed for at least 80 hours per month, or
- If a child's medical condition makes him or her incapable of engaging in these activities, updated information on their condition must be maintained in the child's case plan.

Eligibility requirements for Title IV-E adoption assistance - Fostering Connections makes two important changes to the eligibility requirements for Title IV-E adoption assistance. First, upon enactment of the new law, children who would be eligible for Supplementary Security Income (SSI) benefits based solely on the medical and disability requirements are automatically considered children with special needs and eligible for adoption assistance without regard to the SSI income requirements. Second, the new law will “de-link” over time children’s eligibility for federal adoption assistance payments from outdated AFDC income requirements. Under pre-existing law, a child in foster care is eligible for federal adoption assistance only if the home they are removed from has an income that meets the state’s Aid to Families with Dependent Children (AFDC) income eligibility standard in place on July 16, 1996. As of October 1, 2009, states with federal adoption assistance programs will be able to claim federal funds for more children with special needs through phased-in de-linking of a child’s eligibility from the AFDC income criteria. In the first year, states must begin phasing in an expansion of the program to reach more eligible children with special needs, beginning with youth age 16 or older and children who already have been in care for five years, who are often the most difficult to place for adoption, as well as siblings of children who meet either of these criteria.

Other children will be phased in by age over the next nine years, so that all eligible children with special needs will be eligible for Title IV-E adoption assistance by October 1, 2017.

Currently, youth are eligible for Title IV-E adoption assistance if the youth:

- Was removed from an income-eligible home and placed into foster care pursuant to a voluntary

placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child and the child meets the definition of a child with special needs;

- Was removed from an income-eligible home and placed into foster care pursuant to a voluntary placement agreement and, while in foster care, Title IV-E foster care maintenance payments were made on the child's behalf;
- Meets the medical and disability requirements of SSI;
- Is the child of a minor parent that meets the definition of a child with special needs; or,
- Is adopted following the dissolution of an adoptive placement in which the child was receiving Title IV-E adoption assistance.

Once the de-link is phased in, the same criteria will apply with the exception of the income requirements, which will no longer apply.

Eligibility requirements for Title IV-E kinship guardianship assistance

Child's eligibility –

Children in relative foster homes who have resided with their prospective relative guardians for at least six consecutive months while eligible for Title IV-E maintenance payments are eligible for kinship guardianship assistance. This means that a child must meet all eligibility requirements for Title IV-E foster care, including the requirement that they were removed from an AFDC-eligible home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child and placed in a licensed or approved home. These children must also demonstrate a strong attachment to the prospective relative guardian. If age 14 or older, youth must be consulted about the guardianship arrangement before it is finalized. Siblings of children eligible for kinship guardianship assistance are also eligible for federal kinship guardianship assistance if placed in the same guardianship arrangement even when they do not meet other eligibility requirements. Additionally, all children who, as of September 30, 2008, were receiving assistance or services under a Title IV-E waiver demonstration project can continue to receive that same assistance and services when the waiver is terminated. The state expenditures on behalf of these children will continue to be eligible for federal reimbursement under Title IV-E regardless of whether the state establishes a Kinship Guardianship Assistance Program.

Relative guardian's eligibility –

An eligible guardian must be a relative of the child, as defined by the state, who has a strong commitment to caring permanently for the child and has undergone criminal record checks and child abuse registry checks. The relative must also be licensed as a foster parent because the Administration for Children, Youth and Families currently requires the home to be licensed in order for the child to be eligible for Title IV-E maintenance payments and, therefore, qualify for guardianship assistance.

APPENDIX B

Additional Resources for State Implementation of the Option to Extend Foster Care and Adoption and Guardianship Assistance to Young Adults Under the Fostering Connections to Success and Increasing Adoptions Act of 2008

Frequently Asked Questions (FAQ) on the Provisions Designed to Impact Youth and Young Adults

www.nationalfostercare.org

Older Youth Provisions Principles of Implementation

www.nationalfostercare.org

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

www.grandfamilies.org

New Help for Children Raised by Grandparents or Other Relatives

<http://www.clasp.org/admin/site/publications/files/NewHelpForChildrenRaisedbyGrandparentsandOtherRelatives.pdf>

Need for Extended Dependency Court Jurisdiction Beyond Age 18 and State Chart of Jurisdiction

www.abanet.org/child/empowerment

State Legislation Passed in the Wake of the Fostering Connections Act

www.abanet.org/child/empowerment

Other resources available at:

- www.abanet.org/child
- www.clasp.org
- www.childrensdefense.org
- www.fosteringconnections.org
- www.jlc.org

**American Bar Association
Bar-Youth Empowerment Project
740 15th Street NW
Washington, DC 20005
www.abanet.org/child/empowerment**