



What Child Welfare Attorneys Need to Know About the Fostering Connections to Success and Increasing Adoptions Act

Summary

In the fall of 2008, the U.S. Congress passed and President George W. Bush signed into law the Fostering Connections to Success and Increasing Adoptions Act of 2008. This legislation has been called the most significant federal foster care reform in over a decade. The law includes, among other things, provisions to promote permanent families for foster children through relative guardianships and adoption, to enhance adoption incentives, to increase federal support for adoption assistance regardless of income, to increase supports for youth who “age out” of foster care, to improve education and health care for foster children, to require early identification of potential relative placements for children, to extend federal support for children in foster care after age 18, and to offer federal assistance and support to American Indian children.

Most of the provisions of the new law went into effect on October 7, 2008, although a few provisions will be phased in over the next few years. The following provides a brief overview of some of the key provisions of which child welfare attorneys should be aware. For the full text of the law, see P.L. 110-351.

Practical Implications

Key provisions of the new Fostering Connections to Success and Increasing Adoptions law are set forth below. Following each provision is a list of practical implications for child welfare attorneys to keep in mind as well as relevant existing state law guidance on the issue.

Relative Placement

- Requires state agencies to exercise due diligence to identify and provide notice to all adult relatives of a child within 30 days of removal.
 - *Attorneys representing parents and children should ensure that the state has complied with these provisions at the onset of a case. Attorneys can assist the state by providing names and contact information and advocating for relatives who may be a good placement option for the child. If the state does not exercise due diligence as required by this provision, attorneys should raise this issue with the Nebraska Department of Health and Human Services (NDHHS) and, if necessary, bring this to the attention of the court.*
 - See also NDHHS Administrative Memo #13-2008 regarding “Extended Family Information Form,” available at: <http://www.hhs.state.ne.us/jus/Memos/AM-13-2008.pdf> and NDHHS Administrative Memo #1-2005 regarding “Diligent Efforts to Locate and Assess Non-custodial Parents and Relatives,” available at: <http://www.hhs.state.ne.us/jus/memos/PM-14-Diligent-Efforts.pdf>.
- The state may waive non-safety licensing standards on a case-by-case basis to remove barriers to placement with relatives.
 - *Attorneys representing parents and children, as well as those representing relatives, should be aware of this option. Non-safety licensing standards include requirements such as mandatory square footage and minimum numbers of bedrooms per person.*

Placing Siblings Together

- Requires states to make reasonable efforts to place siblings in the same foster care, kinship guardianship, or adoptive home, unless it would be contrary to the safety or well-being of any of the siblings. If not placed together, the state must make reasonable efforts to provide frequent visitation or ongoing interaction between the siblings, unless it would be contrary to best interests.
 - *This provision is tied to reasonable efforts. Therefore, if the state has not made reasonable efforts to place siblings together or has not set forth a plan to provide interaction between siblings and has not provided a rationale for why not doing so is not in the best interests of the siblings, attorneys should first raise this issue with NDHHS and, if unsuccessful, consider raising this as a violation of reasonable efforts. Attorneys should also ensure that the court makes appropriate reasonable efforts findings that include sibling placement.*

Aging Out

- Requires the state to develop a personal transition plan for aging out in the 90-day period immediately before the youth exits care at age 18-21. The plan should include options on housing, health insurance, education, mentoring, support services, workforce supports, and employment services.
 - *GALs should strongly advocate that this transition plan is put into place and that the juvenile has input into the plan. Attorneys should also seek appropriate oversight of the plan from the court.*
 - See also Neb. Rev. Stat. § 43-285(2): “Following an adjudication hearing..., the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family... The department shall include in the plan for a juvenile who is sixteen years of age or older and subject to the guardianship of the department a written proposal describing programs and services designed to assist the juvenile in acquiring independent living skills... In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to assist the juvenile in acquiring independent living skills.”

Education and Health Care

- Requires states to coordinate with local education agencies to ensure that children remain in the school they are enrolled in at the time of placement in foster care, unless doing so is not in the child’s best interests. If it is not in the child’s best interest, the state must ensure transfer of all the child’s educational records to the new school.
 - *GALs should advocate, where in the child’s best interest, for maximum educational stability. If the state does not act to ensure the child’s educational stability as required by this provision, attorneys should first raise this issue with NDHHS and, if necessary, raise this issue with the court.*
 - See also Neb. Rev. Stat. § 43-1311(4): “...immediately following removal of a child from his or her home pursuant to section 43-284, the person or court in charge of the child shall...[r]equire that the child attend the same school as prior to the foster care placement unless the person or court in charge determines that attending such school would not be in the best interests of the child.”
- Requires states to develop, in collaboration with state Medicaid agency and pediatricians and other experts, a plan for ongoing oversight and coordination of health services for any child in foster care. The plan must describe how health screenings will be provided, how needs identified, monitored and treated, how medical information will be updated and shared with providers, how to ensure continuity of health care services, and oversight of prescription medications.
 - *GALs should strongly advocate that this plan is put into place at the beginning of a case and updated throughout the case. Attorneys can also be helpful in terms of insuring that appropriate parties are aware of necessary information. If the state does not act to implement an appropriate medical plan for the child, attorneys should first raise this issue with NDHHS and, if necessary, raise this issue with the court.*

Other Key Provisions to Note

The Fostering Connections Act also includes a number of critical provisions that will significantly benefit children, but that may have less direct practical implications in individual cases. Nevertheless, it is helpful for practitioners to be aware of these important changes.

For instance, the Fostering Connections Act:

- “Delinks” children’s eligibility for IV-E adoption assistance from outdated income eligibility requirements;¹
- Gives states the *option* to use IV-E funds for kinship guardianship payments;
- Requires the state to inform people who are adopting or are considering adopting about eligibility for the adoption tax credit;
- Gives states the *option* to provide care to youth in foster care until age 19, 20, or 21;²
- Allows tribes to directly access foster care and adoption assistance funds, rather than requiring them to do so through agreements with the state;³ and
- Expands availability of IV-E training dollars to private child welfare agencies, court personnel, attorneys, GALs, and CASAs.

Next Steps

The Fostering Connections Act includes a broad range of provisions that will be beneficial to children. The next step is for advocates here in Nebraska to work to ensure that the law is fully implemented locally. Attorneys can play an important role in the new law’s implementation by being aware of these key provisions and advocating that the state and the courts put them into practice.

On a policy level, attorneys can also advocate that the state take advantage of some of the optional provisions of the Act, such as extending foster care and other services to older children. Research demonstrates that youth who “age out” of foster care struggle compared to their peers on measures related to educational attainment, employment, poverty, homelessness, health care, early pregnancy, and involvement in the criminal justice system. However, research also indicates that youth who continue to receive services during this period tend to fare better than those who do not, and that providing these services also saves money in the long run, yielding an approximately two to one return on the investment.

While the Act doesn’t solve all of the problems that need to be addressed at the federal level in terms of foster care reform, it does represent a significant improvement on many important issues. It is our job to make sure that Nebraska children reap the benefits.

Resources

Center for Law and Social Policy

http://www.clasp.org/issues/pages?type=child_welfare&id=0001

Nebraska Appleseed Foster Care Reform Legal Resource Center

<http://www.neappleseed.org/lrc>

¹ This provision takes effect as of October 1, 2010 and will be phased in through 2018.

² This provision takes effect as of October 1, 2010.

³ This provision takes effect as of October 1, 2009.