

Reauthorization and Restructuring of Adoption Incentive Payments; Extension of Funding for Family Connection Grants

The Adoption Incentive Payments program (Section 473A of the Social Security Act) provides bonus funds to states that increase adoptions out of foster care. Discretionary funding authority for the program is set to expire on September 30, 2013.¹ Family Connection grants are provided on a competitive basis to public and private entities to support demonstration projects to help children remain connected with and supported by their families (Section 427 of the Social Security Act). Mandatory funding for Family Connection projects will end on September 30, 2013.

Overview

The Strengthening and Finding Families for Children Act (ERN13327, referred to here as the discussion draft bill), would extend discretionary funding authority for Adoption Incentive Payments at the current annual level (\$43 million) through FY2016. It would rename the program as Adoption and Legal Guardianship Incentive Payments and would make changes to the incentive structure used to determine these awards, including by allowing states to earn awards for increasing the number of children who are appropriately moved from foster care to legal guardianship and by changing how awards are determined to more accurately assess performance by states that have declining (or growing) foster care caseloads. Implementation of the new incentive structure would be subject to a transition rule that would delay its full implementation until FY2016.

The discussion draft bill would also extend mandatory funding for Family Connection grants for three years (FY2014-FY2016), at the current annual level of \$15 million (and would reserve space for a cost offset to be supplied).² Separately, it would amend the adoption assistance component of the Title IV-E program (under the Social Security Act), adding new reporting requirements related to states' use of any savings they incur as a result of the expansion of federal eligibility for that assistance provided for under the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). It would also require that states spend no less than 40% of any such savings for post-adoption and post-guardianship services and for services to support and sustain positive permanent outcomes for children who might otherwise enter foster care. Finally, the discussion draft bill would amend the guardianship assistance provisions of the Title IV-E program to provide that if the relative legal guardian of a child who is receiving Title IV-E kinship guardianship assistance dies or is incapacitated, the child continues to be eligible for this Title IV-E assistance so long as he or she is placed with a previously identified successor legal guardian. These provisions are discussed more fully below.

¹ For more information see CRS Report R43025, *Child Welfare: Structure and Funding of the Adoption Incentives Program along with Reauthorization Issues*, by Emilie Stoltzfus.

² Annual funding of \$15 million was initially provided for five years (FY2009-FY2013) as part of the Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351). However, for FY2013, this mandatory funding was subject to budget sequestration, which reduced Family Connection grant funding for that year to a little more than \$14.2 million.

Adoption Incentives

Three-Year Extensions of Funding Authority and Ability of States to Earn Incentives

The Adoption Incentive Payments program is authorized to receive \$43 million in annual discretionary appropriations through the end of FY2013. Actual funding for the program was \$37 million for FY2013 and \$39 million in FY2012. (The decrease in actual FY2013 funding reflects implementation of sequestration.) Funding made available in FY2013 was primarily used during that year to pay bonuses that states earned by increasing the number of adoptions finalized during FY2012, and FY2012 is the last year for which states are currently eligible to earn these bonus payments.

The discussion draft bill would extend discretionary funding authority for the program, renamed as the Adoption and Legal Guardianship Incentive Payments, at the current annual level (\$43 million) for each of FY2014-FY2016. Further, it would extend a state's ability to earn incentive payments for three years (FY2013-FY2015). The proposed three-year reauthorization time frame would align the funding authorization for the incentive payments program with the funding authorizations provided for two child welfare programs authorized under Title IV-B of the Social Security Act (Stephanie Tubbs Jones Child Welfare Services and Promoting Safe and Stable Families).

Changes to the Incentive Structure

Under the incentive structure now in law (and used for adoptions finalized for each of FY2008 through FY2012), states were able to earn incentive payments for improving on the number of children that were adopted in three award categories. Specifically, a state could earn – 1) a \$4,000 bonus for each adoption of a foster child above the number of those adoptions completed by the state during FY2007; 2) \$8,000 for each adoption of an older child (9 years or older) that was above the number of those adoptions in the state in FY2007; and 3) provided the state in the same fiscal year had earned a foster child or older child adoption award or had improved on its highest ever rate of adoption, \$4,000 for each special needs adoption of a child younger than 9 years of age that was above the number of such adoptions in the state during FY2007. Additionally, states could be *eligible* for additional incentive funding if they improved the *rate* at which children were placed out of foster care into permanent adoptive homes. However, due to insufficient appropriations, incentive payments in this fourth award category were rarely paid.

The discussion draft bill would modify this incentive structure by allowing states to earn incentive payments for improvements in moving children from foster care to legal guardianships (in addition to adoptions); by permitting states to receive awards in any of four separate categories independently; and by determining whether a state increased adoptions or guardianships in a fiscal year – and had thus earned an incentive payment – by comparing a state's current rate (or percentage) of children placed in finalized adoptions or legal guardianship to the average rate it achieved in three previous years. For example, a state's rate of foster child adoptions achieved in FY2014 would be compared to the average rate of such adoptions achieved in FY2011, FY2012, and FY2013, and foster child adoptions completed in FY2015 would be compared to the average rate it achieved in FY2012, FY2013, and FY2014.

Under the discussion draft bill states would earn an award for improvements in –

- *Foster child adoptions* (\$4,000 for each such adoption above the number of adoptions the state would be expected to achieve if its rate (percentage) of children leaving foster care for adoption had not improved above its most recent three-year average);
- *Older child (age 9 years or more) adoptions or guardianships* (\$8,000 for each such adoption or countable legal guardianship of a child leaving foster care that is above the number the state would be expected to achieve if its rate (percentage) of those adoptions and guardianships had not improved above its most recent three-year average);

- *Special needs adoptions of children under age 9* (\$4,500 for each such adoption above the number of those adoptions the state would be expected to achieve if its rate (percentage) of those adoptions had not improved above its most recent three-year average); and
- *Foster child guardianships* (\$4,000 for each child leaving foster care for a countable legal guardianship that is above the number of such guardianships the state would be expected to achieve if its rate (percentage) of children leaving foster care for guardianship had not improved above its most recent three-year average).

To be counted as a foster child guardianship for purpose of the incentive payments program, a state would need to report to the U.S. Department of Health and Human Services (HHS) that it had determined that returning home was not an appropriate permanency option for the foster child; that the child had a strong attachment to his/her prospective legal guardian and the prospective legal guardian had a strong commitment to caring for the child on a permanent basis. Further, if the child was 14 years of age or older, the state would need to have consulted with the child about the guardianship arrangement. Alternatively, a state could use other procedures to determine that legal guardianship was an appropriate option for the child and, if so, would be required to report those procedures to HHS.

Transition Rule

The discussion draft bill would provide a two-year transition period before this new incentive structure would be fully implemented. Specifically, renaming the program Adoption and Legal Guardianship Incentive Payments, and the changes in the incentive structure would not be made effective until October 1, 2014. This means awards made in FY2014 (for adoptions finalized in FY2013) would be paid under the incentive structure (including award categories, baseline numbers, and award amounts) described above as in current law. Further, awards paid in FY2015 (for adoption or legal guardianships finalized in FY2014) would be paid as one-half of any amount a state would earn under the incentive structure in current law *plus* one-half of any amount a state would earn under the incentive structure included in the discussion draft bill. Finally, the incentive structure included in the discussion draft would be fully implemented when awards are paid in FY2016 (for adoptions and guardianships finalized in FY2015).

Use of Adoption Incentive Payments

The discussion draft bill would stipulate that states must use any incentive payments received under this program to supplement, rather than to supplant other federal or non-federal funds being used to support child welfare services for children and families. It would further require states to spend no less than 25% of any of those incentive funds for services to support and sustain reunification of children with their families, including youth who emancipate from care and subsequently return to their family. As is true under current law, states would be permitted to spend the remaining (up to 75%) incentive payments they receive to provide any of the broad range of child and family services that may be supported under the federal child welfare programs included in Title IV-B and Title IV-E.

State Reinvestment of Any Adoption Assistance Savings

The discussion draft bill would also amend provisions of the adoption assistance component of the Title IV-E program related to accounting for and “reinvesting” certain state savings under the program. States are now required to document any savings that accrue to the state based on the incremental removal of federal income eligibility criteria for Title IV-E adoption assistance, which began in FY2010 and will be fully accomplished as of FY2018.³ Further, they must reinvest any such savings in one or more of the

³ Soon after this expanded eligibility was enacted in 2008, as part of P.L. 110-351, the Congressional Budget Office (CBO) projected that it would increase federal Title IV-E adoption assistance spending by \$1.4 billion over ten years, with the bulk of

broad range of services that may be provided to children and their families under the child welfare programs authorized in Title IV-B and Title IV-E of the Social Security Act.

Under the discussion draft bill, states would be required to annually calculate any savings in state spending based on expanded Title IV-E eligibility criteria using a methodology specified by HHS or one proposed by the state and approved by HHS. Additionally, each state would need to annually submit to HHS, the methodology it used to calculate savings; the amount of any savings identified; and how the savings are to be spent. HHS would be required to post this state-reported information on its website.

Additionally, states would be required to spend no less than 40% of any state savings identified to provide post-adoption or post-guardianship services to children placed in adoptive homes or with guardians and to support and sustain positive permanent outcomes for children who otherwise might enter foster care. The law would be further amended to stipulate that the spending of any such savings would need to supplement, rather than to supplant, any federal or non-federal money already being used to support child welfare services available under programs included in Title IV-B or Title IV-E of the Social Security Act.

Successor Guardianship

Under current law a child receiving Title IV-E kinship guardianship assistance and whose legal relative guardian dies or becomes incapacitated cannot be certain that this assistance will continue with a successor guardian. Instead the child must have eligibility for this Title IV-E assistance re-determined when placed with a successor guardian. Among other things, to be found eligible, the child would need to re-enter foster care for a period of time. The discussion draft bill would amend the guardianship assistance provisions of the Title IV-E program to provide that if the relative legal guardian of a child who is receiving Title IV-E kinship guardianship assistance dies or is incapacitated, the child continues to be eligible for this assistance so long as he or she is placed with a successor legal guardian who was named in the Title IV-E kinship guardianship agreement that was earlier entered into between the state child welfare agency and the child's previous relative legal guardian.

Family Connection Grants

The discussion draft bill would extend annual mandatory funding of \$15 million for Family Connection Grants (Section 427 of the Social Security Act) for three years (FY2014-FY2016). (The draft bill reserves space for a cost offset to be supplied.) Family Connection grants support demonstration projects to implement four kinds of programs intended to enable children in foster care, or at risk of entering care, to stay connected (or newly connect) with family. These are kinship navigator programs, intensive finding efforts, family group decision-making meetings, and residential family treatment programs that address substance abuse and mental health issues. The discussion draft would remove a current law provision stipulating that no less than 5% of the Family Connection Grants funding provided in each fiscal year must be used to support kinship navigator programs.

Effective Date

Generally the provisions of the bill would be made effective as if enacted on October 1, 2013. However, as noted above, the provisions changing the incentive structure and renaming the program the Adoption and Legal Guardianship Incentive Payments, would not be in effect until one year later, October 1, 2014.

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that increase (\$1.3 billion) projected to occur in FY2014-FY2018. See CBO Cost Estimate, *H.R. 6893, Fostering Connections to Success and Increasing Adoptions Act of 2008*, as signed by the President October 7, 2008, December 23, 2008.
