national foster care coalition

Voice for Adoption
SPEAKING OUT FOR OUR NATION'S WAITING CHILDREN

Federal Policymakers Strengthen Law to Account for Adoption Assistance "De-link" Savings & Move to Align Funding Designation for Post-Permanency Services

Over several years parents and advocates have been building a case for increased investments into post-permanency services. The recently signed law, Preventing Sex Trafficking and Strengthening Families Act (public law 113-183) includes a provision to strengthen existing law and points to specific designations for reinvestments into post-placement services. State administrators and advocates should become familiar with this provision and begin planning around this required reinvestment.

History:

A child's eligibility for Title IV-E foster care and adoption assistance has historically been linked to eligibility for the Aid to Families with Dependent Children (AFDC) program; a program that is no longer in existence today. Meaning to receive federal foster care or adoption assistance, the foster child's birth parents had to be eligible for the AFDC program (income levels tied to the 1996 outdated program). The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) de-linked a child's eligibility for federal Title IV-E Adoption Assistance, from the outdated AFDC program. The "de-link" is phased in over a ten year period. By 2018 all children with special needs adopted from foster care (who meet other Title IV-E criteria) will be eligible for federal Adoption Assistance.

As a result, states stand to accrue a significant savings over time. The law requires that savings be reinvested into child welfare services, to ensure that increased federal support is recognized within child welfare programs. However, when the law passed there was little guidance provided to states about this requirement. In 2010, Program guidance issued from the Department of Health and Human Services (HHS) instructed that state agencies, "must spend any savings generated from implementing the revised adoption assistance eligibility criteria on child welfare services provided under titles IV-B and IV-E". States were directed to provide certification that the requirement was being met within their Title IV-E plans. However, the instructions further noted that, "A title IV-E agency has the flexibility to determine the methodology for calculating savings and is not required to provide a specific accounting of funds to ACF."

State Advocacy

Did you know?
The new law – Preventing Sex Trafficking and Strengthening Families Act of 2014 – requires states to track and reinvest a portion of the federal Adoption Assistance "De-Link" savings into post-permanency services.

What Can State Advocates Do?

- **Become familiar with the history of this provision.**
- **Understand the new law requirements.**
- **Ask questions and begin a local dialogue to ensure that these savings are being reinvested for children and families.**

State advocates can begin requesting information from local officials about the amount of savings their state is generating, and how these dollars are being reinvested, as a result of the 2008 increased federal investment to make all children eligible for Title IV-E Adoption Assistance by fiscal year 2018.

Congress passed two federal laws (Fostering Connections Act of 2008 - P.L. 110-351 and Child and Family Services Improvement and Innovation Act of 2011 P.L. 112-34) that tried to track how states are reinvesting the savings. However, the reinvestments have yet to be calculated and reported in a way that is comprehensive. In May 2014, a U.S. Government Accountability Office (GAO) report found that, "Although states are required to spend any resulting savings on child welfare services, only 21 states reported calculating these savings for fiscal year 2012, and 20 states reported difficulties performing the calculations." As a result of these findings, GAO recommended that HHS provide guidance to states on how to calculate savings resulting from the change (or de-link) in federal Title IV-E Adoption Assistance eligibility criteria.

Current Law Statute:

> "Sec 473 (a) (8) A State shall spend an amount equal to the amount of savings (if any) in State expenditures under this part resulting from the application of paragraph (2)(A)(ii) to all applicable children for a fiscal year to provide to children or families any service (including on post-adoption services) that may be provided under this part or part B, and shall document how such amounts are spent, including on post-adoption services" *(highlighted as a result of the 2011 Public Law 112-34, reauthorization of Promoting Safe and Stable Families funding or Title IV-B program)*

Additional Requirements In Statute As A Result of Public Law 113-183:

On September 29, 2014, the President signed The Preventing Sex Trafficking and Strengthening Families Act (Public Law 113-183). The new law amends the current Adoption Assistance "de-link" provision and adds new requirements for calculating and reporting any such savings, designates a portion of savings for spending on specific services, and adds language to make sure any savings are retained as supplemental funds into child welfare, to ensure these dollars are not supplanted elsewhere in state budgets.

> Sec. 206 - State report on calculation and use of savings resulting from the phase-out of eligibility requirements for adoption assistance; requirement to spend 30 percent of savings on certain services.
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> Section 473(a)(8) (42 U.S.C. 673(a)(8)) is amended to read as follows:
> ``(8)(A) A State shall calculate the savings (if any) resulting from the application of paragraph (2)(A)(ii) to all applicable children for a fiscal year, using a methodology specified by the Secretary or an alternate methodology proposed by the State and approved by the Secretary.
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> ``(B) A State shall annually report to the Secretary-- ``(i) the methodology used to make the calculation described in subparagraph (A), without regard to whether any savings are found; ``(ii) the amount of any savings referred to in subparagraph (A); and``(iii) how any such savings are spent, accounting for and reporting the spending separately from any other spending reported to the Secretary under part B or this part.

``(C) The Secretary shall make all information reported pursuant to subparagraph (B) available on the website of the Department of Health and Human Services in a location easily accessible to the public.

``(D)(i) A State shall spend an amount equal to the amount of the savings (if any) in State expenditures under this part resulting from the application of paragraph (2)(A)(ii) to all applicable children for a fiscal year, to provide to children of families any service that may be provided under part B or this part. A State shall spend not less than 30 percent of any such savings on post-adoption services, post-guardianship services, and services to support and sustain positive permanent outcomes for children who otherwise might enter into foster care under the responsibility of the State, with at least 2/3 of the spending by the State to comply with such 30 percent requirement being spent on post-adoption and post-guardianship services. *(Meaning, at least 20 percent of the savings is required for investment into post-adoption and post-guardianship services).* ``(ii) Any State spending required under clause (i) shall be used to supplement, and not supplant, any Federal or non-Federal funds used to provide any service under part B or this part.''

Rationale for Ensuring Savings Are Reinvested:

By fiscal year 2018, when the Adoption Assistance eligibility is fully implemented, the Congressional Budget Office (CBO) projected that states would be saving $500 million ($1.4 billion over the ten year period). Even if the CBO calculation is an imperfect estimate, there is still a significant amount of funding that states have already saved that can be used for increased investments into prevention, intervention, and post-placement services.

Congressional intent and the advocacy community *did not* promote the 2008 law leading to additional federal funding for Adoption Assistance through the elimination of the AFDC eligibility income standard so that federal funds would replace state and local spending on child welfare systems. It was based on the desire that the single biggest federal funding increase found in the Fostering Connections Act would result in greater investments into other child welfare services. Additionally, a failure to enforce this reinvestment provision lends credence to the argument that a full de-link for eligibility of Title IV-E foster care maintenance payments (which is still linked to the AFDC program - birth parent income at 1996 levels) will only result in states shifting costs to the federal government without any reinvestment into child welfare services. Currently there is a national dialogue happening around the need for the "second phase of AFDC de-link", because the percent of children in foster care who are federally covered under Title IV-E foster care is continuing to decline, meaning that states are absorbing the cost of federally ineligible children. Tight budgets at both the federal and local levels make these conversations critically important; investments into protecting children and supporting families need to remain at the forefront, by all stakeholders.