

April 30, 2015

Memo: Clarifying Successor Adoption – Allowance of Continued Adoption Assistance & Guidance on the Successor Guardian Provision

To: JooYeun Chang, Associate Commissioner, Children’s Bureau, Administration for Children, Youth and Families, Administration for Children and Families, HHS

From: Nicole Dobbins (Voice for Adoption), MaryLee Allen and Stefanie Sprow (Children’s Defense Fund)

Re: Clarifying Successor Adoption: Continuing Adoption Assistance & Corresponding Language for Successor Guardian Implementation

In a recent presentation Nicole and Stefanie gave about the new provisions in P.L. 113-183, including the new “Successor Guardian” provision (Section 207), a number of state foster care and adoption administrators have raised concerns regarding situations when adopted children whose adoptive parent dies or the adoption dissolves and the child loses assistance until the Title IV-E agency finalizes the subsequent adoption.

The child welfare policy manual addresses the question regarding the requirements about continuing the child’s eligibility for title IV-E adoption assistance when the adoptive parent dies or the adoption is dissolved. However, there seems to be a lack of knowledge that the successor adoption language in current policy exists. We believe ACF could help clarify this misunderstanding by some state administrators by highlighting the language and issuing a notice to states on both successor adoption and successor guardianship at the same time.

There are two policy manual sections relevant to this discussion. First, it’s clear that a child may continue eligibility “in a subsequent adoption” but there is no mention in the answer to the question listed below (reference cited) about any assistance to the child whose subsequent adoption is pending:

Question: Please explain the requirements regarding a child's eligibility for title IV-E adoption assistance when the adoptive parents die or the adoption is dissolved.

Answer: In the situation where a child is adopted and receives title IV-E adoption assistance, but the adoption later dissolves or the adoptive parents die, a child may continue to be eligible for title IV-E adoption assistance in a subsequent adoption.

(Child Welfare Policy Manual, 8.2B.4 Title IV-E Adoption Assistance Program, Eligibility, Deceased adoptive parents/dissolved adoptions; Question and Answer 1)

The manual clearly notes that the child’s eligibility for federal adoption assistance continues in a subsequent adoption, but in many cases the actual adoption finalization can take a significant amount of time (several months or even longer). Administrators seemed to be unclear about what their options are during this period of time prior to the subsequent adoption. Some seem to have

found ways to provide coverage before the subsequent adoption finalizes. Others have not or seem unclear that they are allowed to do so.

Below we have cited another provision of the policy manual that includes a sentence at the end of it that makes clear that payments can be made on behalf of a child in an adoptive placement prior to finalization (i.e. a subsequent adoption).

Question: Can the title IV-E agency claim Federal financial participation (FFP) for the nonrecurring expenses of adoption if the adoption is never finalized?

Answer: Yes. The State may claim FFP for the nonrecurring expenses of adoption in accordance with the requirements set forth in 45 CFR 1356.41 if:

- there is a title IV-E agreement for the nonrecurring expenses of adoption between the adoptive parent(s) and the State or local agency; and
- the State has determined that the child is a child with special needs in accordance with section 473(c) of the Social Security Act (the Act).

Consistent with section 473(a)(5) of the Act, payments may be made on behalf of a child in an adoptive placement prior to the finalization of adoption when all eligibility requirements in section 473 of the Act are met and there is a signed adoption assistance agreement between the State or local agency and the adoptive parent(s). The regulation at 45 CFR 1356.41(b) provides that the agreement for the nonrecurring expenses of adoption may be a separate document or a part of the agreement for either Federal or State adoption assistance. In allowing adoption assistance payments to be made prior to the finalization of the adoption, the Department has never differentiated between payments for ongoing adoption assistance under such agreements and payments for the nonrecurring expenses for adoption. **Further, nothing in statute or regulation prohibits reimbursement for the expenses incurred by adoptive families in circumstances where the adoption is not finalized.**

(Child Welfare Policy Manual, 8.2B.4 Title IV-E Adoption Assistance Program, Eligibility, Deceased adoptive parents/dissolved adoptions; Question and Answer 6)

Example: An adoptive parent dies and a relative who is planning to adopt is the one who steps in to care for the child. That relative notifies the agency of the parent's death. There is not a clear consensus among states about whether the agency can provide federal assistance to the relative on behalf of the child while the adoption is pending. Some pointed out that the child often has to re-enter foster care for the interim period and that the adoption can sometimes take a few months or even longer given the adoption court docket. The intent of successor adoption, like successor guardian, is to prevent children from having to re-enter foster care in order to become eligible again for Title IV-E adoption assistance.

Suggested solutions and recommendations:

- **Issue identical language on successor adoption and successor guardian:** Identical language on successor adoptions and successor guardianship should be issued when guidance on the successor guardian provision is released. You may want to note that in discussions about the new successor guardian provision it came to the attention of HHS that some state administrators believe a gap currently exists in continued coverage for children who were adopted with title IV-E assistance.
- **Clarify that language on successor adoption already exists:** Provide clarity that current policy already allows for successor adoptions and that payments for adoption assistance can be made on behalf of the child prior to finalization of the new adoption. The Children's Bureau could pull up the explanation at the end of the question 6 (8.2D.3) and add it to question 1 (8.2B.4) to reinforce this point.