ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
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	4. Key Words: Title IV-B and IV-E Plans, Indian Tribes, Foster Care, Adoption Assistance, Kinship Guardianship Assistance, Adoption Incentives, Training, Fostering Connections to Success and Increasing Adoptions Act of 2008	

PROGRAM INSTRUCTION

TO: State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act, Indian Tribes and Indian Tribal Organizations

SUBJECT: NEW LEGISLATION — The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law (P.L.) 110-351)

LEGAL AND RELATED:

Titles IV-B, IV-D and IV-E of the Social Security Act (the Act); P.L. 110-351

PURPOSE: This is to inform State, Tribal and Territorial Title IV-B and IV-E agencies and Indian Tribes and Indian Tribal Organizations of the enactment of the Fostering Connections to Success and Increasing Adoptions Act of 2008 and provide basic information about the provisions of this law.

INFORMATION: The President signed the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351) into law on October 7, 2008. Generally, the law amends the Social Security Act to extend and expand adoption incentives through FY2013; create an option to provide kinship guardianship assistance payments; create an option to extend eligibility for title IV-E foster care, adoption assistance and kinship guardianship payments to age 21; de-link adoption assistance from Aid to Families with Dependent Children (AFDC) eligibility; and, provide federally-recognized Indian Tribes or consortia with the option to operate a title IV-E program, among many other provisions. A draft compilation of the revised Social Security Act can be found at. http://www.acf.hhs.gov/programs/cb/index.htm. The law is described in greater detail in the summary provided below.

Please note that the following information is a summary of many, but not all provisions in Public Law 110-351. This summary is intended to introduce the enacted provisions rather than provide substantive guidance on implementing the law. Additional guidance will be forthcoming.

Option to provide kinship guardianship assistance payments to certain children and related provisions

- The law adds section 471(a)(28) to the Act to create a new plan option for States and Tribes to provide kinship guardianship assistance payments under title IV-E for relatives taking legal guardianship of children who have been in foster care. The law adds new section 473(d) of the Act to provide requirements for the title IV-E kinship guardianship assistance program. Federal financial participation (FFP) is available for kinship guardianship assistance payments pursuant to section 474(a)(5) of the Act.

- To be eligible for kinship guardianship assistance payments, a child must have been eligible for title IV-E foster care maintenance payments while residing for at least six consecutive months in the home of the prospective relative guardian. Further, the State must determine that: 1) being returned home or adopted are not appropriate permanency options for the child; 2) the child has a strong attachment to the prospective relative guardian and the guardian has a strong commitment to caring permanently for the child; and, 3) a child 14 years or older has been consulted regarding the kinship guardianship arrangement (section 473(d)(3)).

- The law requires that a kinship guardianship assistance agreement be negotiated and entered into with the relative guardian, and include specific information such as that the agreement remains in effect without regard to residency and specific information on the payments and additional services for which the child and guardian are eligible. The agreement must also provide for the title IV-E agency to pay the total amount of nonrecurring expenses associated with obtaining legal guardianship of the child, up to $2,000 (section 473(d)(1)).

- The amount of a kinship guardianship assistance payment must be no greater than the amount of the foster care maintenance payment which would have been paid on behalf of the child if the child had remained in a foster family home (section 473(d)(2)).

- The State or Tribe may make kinship guardianship assistance payments on behalf of siblings of an eligible child who are placed together with the same relative under the same kinship guardianship arrangement (section 473(d)(3)(B)).

- The law amends section 473(b)(3)(C) of the Act to extend categorical eligibility for Medicaid to children receiving kinship guardianship assistance payments.

- The law modifies the title IV-E plan requirement at section 471(a)(20) to require procedures for fingerprint-based criminal records checks of relative guardians and child abuse and neglect registry checks of relative guardians and adults living in the guardian's home before a relative guardian may receive title IV-E kinship guardianship assistance payments on behalf of a child.

- The law amends the case plan provisions by adding section 475(1)(F), which requires descriptions regarding the appropriateness of guardianship as a permanent plan, among other items, for a child whose plan is to receive kinship guardianship assistance.

- The law amends the Chafee Foster Care Independence Program (CFCIP) at section 477(a)(7) to add the purpose of providing services to youth who after age 16 leave foster care for kinship guardianship or adoption. The law also amends the Education and Training Voucher (ETV) Program at section 477(i)(2) to permit vouchers for youth who after attaining age 16 enter into kinship guardianship or are adopted from foster care.

- The law adds new section 474(g) to permit States to claim title IV-E for continued assistance or services for children who were receiving assistance or services under a title IV-E guardianship demonstration project as of September 30, 2008, when that demonstration project is terminated (section 474(g)).

- Effective Date: Upon enactment (October 7, 2008).

Family Connection Grants

- The law amends the Act to create a new section 427 which authorizes the Secretary to award competitive, matching grants to State, local, or Tribal child welfare agencies, and private non-profit organizations for the purpose of helping children who are in or are at-risk of entering into foster care reconnect with family members through: (1) kinship navigator programs; (2) efforts to find biological family and reestablish relationships; (3) family group decision-making meetings; or, (4) residential family treatment programs.

- The law appropriates $15 million each year for the family connection grants for FY 2009 through FY 2013. $5 million of the appropriated funds are reserved for grants to implement kinship navigator programs. There is also funding set-aside for evaluation (3 percent of funds) and technical assistance (2 percent of funds).

- Effective Date: Upon enactment (October 7, 2008).

Option to Extend Title IV-E Foster Care, Adoption & Guardianship Up to 21

- The law adds a new definition of "child" to section 475 of the Act. As defined, a "child" is: (1) an individual who has not yet turned 18 years old;

or, (2) at State/Tribal option, an individual in foster care, or an individual adopted or in kinship guardianship (if a title IV-E assistance agreement became effective after the child turned age 16) who has not attained 19, 20, or 21 years old when the youth meets prescribed conditions for continued payments. The conditions for continued title IV-E payments apply to youth over age 18 and require the youth to be completing secondary school (or equivalent), enrolled in post-secondary or vocational school, participating in a program or activity that promotes or removes barriers to employment, employed 80 hours a month, or to be incapable of any of these due to a documented medical condition (section 475(8)(B)(iv)).

- The law amends the existing definition of a child care institution in section 472(c)(2) of the Act to include a supervised setting in which an individual who has attained 18 years of age is living independently, consistent with conditions the Secretary establishes in regulations.

- Effective date: October 1, 2010.

Short-Term Training

- The law amends section 474(a)(3)(B) of the Act to permit title IV-E agencies to claim the costs of short-term training of: relative guardians; private child welfare agency staff providing services to children receiving title IV-E assistance; child abuse and neglect court personnel; agency, child or parent attorneys; guardians ad litem; and, court appointed special advocates. The Federal financial participation (FFP) rate of Federal reimbursement for such training costs changes each year over a five-year period.

- Effective date: Upon enactment (October 7, 2008), subject to an increasing FFP rate for these additional trainee groups as follows: 55 percent in FY 2009; 60 percent in FY 2010; 65 percent in FY 2011; 70 percent in FY 2012; 75 percent in FY 2013 and thereafter (section 203(b) of P.L. 110-351).

Reauthorization of Adoption Incentives Program

- The law amends section 473A of the Act to extend the Adoption Incentive Program through FY 2013, update the "base year" used to measure increases to FY 2007 (section 473A(g)), and double incentive payment amounts for special needs (from $2,000 to $4,000) and older child adoptions (from $4,000 to $8,000) (section 473A(d)(1)).

- The law also creates a "highest ever" foster child adoption rate payment for exceeding the highest foster child adoption rate since 2002. This incentive is available only if there are any remaining funds after awarding foster child, special needs and older child adoption incentive payments (section 473A(d)(3)).

- Effective date: Upon enactment (October 7, 2008).

Adoption Assistance Program

- The law makes changes to the adoption assistance program in section 473 by delinking adoption assistance program from the Aid to Families with Dependent Children (AFDC) requirements and by changing other program requirements, with most changes taking effect beginning in FY 2010.

- Beginning in FY 2010, a child with special needs who is "an applicable child" (defined below) is eligible under the following revised eligibility criteria if the child: 1) at the time of the initiation of adoption proceedings the child was in the care of a public or private child placement agency by way of a voluntary placement, voluntary relinquishment or a court-ordered removal with a judicial determination that remaining at home would be contrary to the child's welfare; 2) meets the disability or medical requirements of the Supplemental Security Income (SSI) program; 3) was residing with a minor parent in foster care (who was placed in foster care by way of a voluntary placement, voluntary relinquishment or court-ordered removal); or, 4) was eligible for adoption assistance in a previous adoption in which the adoptive parents have died or had their parental rights terminated (section 473(a)(2)(A)(ii) and 473(a)(2)(C)(ii)).

- The revised adoption assistance eligibility criteria are phased-in from FY 2010 to FY 2018 based on whether the child is defined as "an applicable child," which primarily relates to the age of the child in the year the agreement is entered into. The revised program rules apply for children who turn 16 or older in FY 2010 and for whom an adoption assistance agreement is entered into that same year; then each subsequent year the age to apply the revised program rules decreases by two years (e.g., children who turn 14 or older in FY 2011 and children who turn 12 or older in FY 2012) until children of any age may be eligible according to the revised criteria in FY 2018 (section 473(e)(1)(B)).

- Beginning in FY 2010, the revised eligibility criteria also apply to a child who has been in foster care for 60 consecutive months (5 years) or is a sibling to a child who is eligible due to his age or length in foster care (section 473(e)(2) and (3)).

- A State is required to spend an amount equal to any savings in State expenditures under title IV-E as a result of applying the new program rules to applicable children for a fiscal year for services permitted under title IV-B or IV-E (section 473(a)(8)).

- Children who have special needs but who are not citizens or residents of the U.S. and were either adopted in another country or brought to this country for the purposes of adoption are categorically ineligible for adoption assistance, except if the child meets the eligibility criteria after the disruption of the international adoption (section 473(a)(7)(A)).

- Effective date: Upon enactment (October 7, 2008), subject to the phase-in described above for certain provisions.

Direct Title IV-E Funding to Indian Tribes & Related Provisions

- The law creates a new section 479B of the Act, which allows federally-recognized Indian Tribes, Indian Tribal organizations and Tribal consortia (hereafter "Tribes") to apply to the Secretary to receive title IV-E funds directly for foster care, adoption assistance and, at Tribal option, kinship guardianship assistance. The title IV-E requirements apply equally to Tribes and States, except as otherwise described in the law (section 479B(b)).

- A Tribal plan for title IV-E must demonstrate that the Tribe has not had any uncorrected significant or material audit exceptions under Federal grants or contracts relating to the administration of social services for three years prior to the date of plan submission (section 479B(c)(1)(A)).

- A Tribal plan must also describe the Tribe's title IV-E service area and population (section 479B(c)(1)(B)).

- For the first 12 months that a Tribe's title IV-E plan is in effect, the Tribe may use nunc pro tunc orders and affidavits to verify reasonable efforts and contrary to the welfare judicial determinations for title IV-E foster care eligibility (section 479B(c)(1)(C)(ii)(I)).

- For the purposes of determining AFDC eligibility for title IV-E, Tribes must use the title IV-A State plan (as in effect as of July 16, 1996) of the State in which the child resided at the time of removal (section 479B(c)(1)(C)(ii)(II)).

- The law allows Tribes receiving title IV-E to use in-kind funds from third-party sources as match for administrative and training costs, but places limits in statute on the amount of in-kind expenditures and types of third-party sources and authorizes the Secretary to set future limits in regulation (section 479B(c)(1)(D)).

- The law outlines the formulation of a Tribal Federal Medical Assistance Percentage (FMAP) to be used for direct title IV-E funding to Tribes which takes into consideration the Tribe's service area and population (section 479B(d)). The law also requires the application of the Tribal FMAP, if higher than the State FMAP, for certain payments under title IV-E agreements and contracts between States and Tribes (section 301(c)(2) of P.L. 110-351).

- The law creates an option for Tribes with an approved title IV-E plan or a title IV-E Tribal/State agreement to receive directly from the Secretary a portion of the State's CFCIP and ETV allotments to provide services to Tribal youth (section 477(j)).

- The law adds a new title IV-E plan requirement at section 471(a)(32) for the State to negotiate in good faith with any Tribe that requests the development of a title IV-E agreement with the State to administer all or part of the title IV-E program on behalf of Indian children and access to title IV-E administration, training and data collection resources.

- The law also adds a new CFCIP plan requirement at section 477(b)(3)(G) for a State to negotiate in good faith with any Tribe that does not receive a CFCIP or ETV allotment directly from the Secretary for a fiscal year and requests to develop an agreement to administer or supervise the CFCIP or ETV program with respect to eligible Indian children and receive an appropriate portion of the State's allotment for such administration or supervision.

- Effective date: October 1, 2009

Tribal Technical Assistance and Grants to Support Title IV-E Plan Development

- The law amends section 476 of the Act to require HHS to provide technical assistance and implementation services to Tribes seeking to operate title IV-B and IV-E programs or enter into cooperative agreements with States under new section 476(c). HHS is also authorized to make one-time grants of up to $300,000 to Tribes that apply for funding to assist in developing a title IV-E plan to implement a title IV-E program directly. If HHS awards funding to a Tribe but the Tribe does not submit a title IV-E plan within 24 months of receiving the grant, the Tribe must repay the grant funds to HHS unless the Secretary waives the requirement because the failure to apply was due to circumstances beyond the Tribe's control.

- $3 million is directly appropriated by the law for FY 2009 and each fiscal year thereafter for the technical assistance and grants.

- Effective date: upon enactment (October 7, 2008).

Other Provisions

The law also contains the following provisions:

- *Title IV-E plan requirement for notice to relatives of removal:* The law adds a new plan requirement at section 471(a)(29) to require that title IV-E agencies exercise due diligence to identify and notify all adult relatives of a child within 30 days of the child's removal, of the relatives' options to become a placement resource for the child.

- *Title IV-E plan requirement for school attendance assurance:* The law adds a new plan requirement at section 471(a)(30), requiring assurances that each child receiving a title IV-E foster care, adoption or guardianship payment is a full-time elementary or secondary school student, or is incapable of attending school due to a documented medical condition.

- *Title IV-E plan requirements for sibling placement:* The law adds a new plan requirement at section 471(a)(31) of the Act to require title IV-E agencies to make reasonable efforts to place siblings removed from their home in the same foster care, adoption or guardianship placement, or facilitate visitation or ongoing contacts with those that cannot be placed together, unless it is contrary to the safety or well-being of any of the siblings to do so.

- *Title IV-E plan requirement to inform parents of adoption tax credit:* The law adds a new plan requirement at section 471(a)(33) for title IV-E agencies to inform prospective adoptive parents of the adoption tax credit.

- *Title IV-E plan case-by-case licensing waivers for relatives and Report to Congress:* The law amends section 471(a)(10) to explicitly permit the title IV-E agency to waive on a case-by-case basis a non-safety licensing standard for a relative foster family home. In addition, HHS must submit a Report to Congress, two years after enactment, on children placed in relative foster family homes and the use of licensing waivers.

- *Educational stability case plan requirement:* The law amends the case plan provisions by adding section 475(1)(G) to require a plan for ensuring the educational stability of the child in foster care.

- *Travel to school added to foster care maintenance payment definition:* The law amends the definition of a "foster care maintenance payment" in section 475(4) of the Act to include the cost of reasonable travel for the child to remain in the same school he or she was attending prior to placement in foster care.

- *Title IV-B plan health oversight and coordination plan requirements:* The law amends the existing title IV-B plan requirement at section 422(b)(15) of the Act to require States and Tribes, in coordination with the State Medicaid agency, to develop a plan for ongoing oversight and coordination of health care services for children in foster care, including mental health and dental health needs.

- *Transition plan for emancipating youth:* The law amends the case review system at section 475(5) of the Act to create a new requirement that during the 90-day period prior to the youth's emancipation, the caseworker must develop a personalized transition plan as directed by the youth.

- *Access to Federal Parent Locator Service:* The law amends section 453(j)(3) of title IV-D of the Act to grant authority to the Secretary to conduct comparisons and make disclosures to States of information for the purposes of the title IV-B and IV-E programs using the Federal Parent Locator Service.

- Effective dates: Upon enactment (October 7, 2008), with delays permitted

when certain State legislative action is required (see instructions below).

INSTRUCTIONS: For States:

Many of the law's provisions have specific effective dates that are cited above. States are required to comply with the requirements imposed by the amendments to titles IV-B and IV-E of the Act as of the effective date of the enactment of a new or modified statutory provision, unless otherwise indicated (section 601(a) of P.L. 110-351). A revised title IV-E plan pre-print is forthcoming.

A limited period of delay is permitted when the Secretary of the U.S. Department of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required for a State to comply with the additional plan requirements under titles IV-B or IV-E of the Act imposed by P.L. 110-351. A "delayed effective date" for implementation applies only to those plan requirements listed in Attachment A. The "delayed effective date" is defined as the beginning of the first day of the first calendar quarter following the close of the first regular session of the State legislature that ends after October 7, 2009. If the State has a two-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature (section 601(b) of P.L. 110-351).

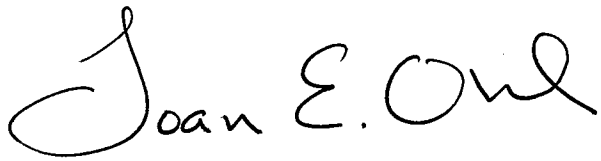
States that require legislation to comply with the new title IV-B or title IV-E plan requirements should submit the attached certification (Attachment A) to the applicable Children's Bureau Regional Program Manager indicating those plan requirements that will necessitate State legislation. The certification must include the "delayed effective date" in accordance with the above definition of such date. States that do not require any legislation must also submit the certification indicating that State legislation is not necessary and that a "delayed effective date" is not applicable.

All certifications must be signed by the designated State agency official and submitted to the Children's Bureau Regional Program Manager for approval no later than 30 days from the date of this program instruction. Attachment A signed by the Associate Commissioner of the Children's Bureau will be sent to the State to authorize the delayed effective date and certify that the Secretary has determined that State legislation is necessary.

For Indian Tribes:

Additional information and guidance about the opportunity to operate a title IV-E program for Indian Tribes is forthcoming.

INQUIRIES: Children's Bureau Regional Program Managers



Joan E. Ohl
Commissioner

Attachment A – Certification of Required State Legislation
Attachment B – H.R. 6983
Attachment C - Children's Bureau Regional Program Managers

OMB Approval No. 0980-0141 Expiration Date: 11/30/2008

ATTACHMENT A - CERTIFICATION OF REQUIRED STATE LEGISLATION

TITLE IV-E STATE PLAN - STATE OF _____

I hereby certify that State legislation is necessary to comply with the plan requirements under title IV-B and title IV-E of the Social Security Act as amended by Public Law 110-351, the Fostering Connections to Success and Increasing Adoptions Act of 2008, which **have** been checked off below. I hereby further certify that State legislation is not necessary to comply with those plan requirements which have **not** been checked off below:

☐ Development of health care oversight and coordination plans for children in foster care in consultation with the Medicaid agency and health care experts [section 422(b)(15)]

☐ Due diligence to identify and notify adult relatives within 30 days of a child's placement in foster care [section 471(a)(29)]

☐ Assurances that school-age title IV-E recipients are full-time students [section 471(a)(30)]

☐ Reasonable efforts to place siblings together or provide ongoing interaction [section 471(a)(31)]

☐ Good faith negotiation with Indian Tribes requesting the development of a title IV-E agreement [section 471(a)(32)]

☐ Notification of prospective adoptive parents of Federal adoption tax credit [section 471(a)(33)]

☐ Case plan inclusion of a plan for educational stability of the child while in foster care [section 475(1)(G)]

☐ Case plan inclusion of a transition plan for youth emancipating from foster care [section 475(5)(H)]

Therefore, I do request a delay of the effective date for implementing the above requirements that are checked and do not request a delay of the effective date for implementing the above requirements that are not checked. The delayed effective date for the checked requirements will be _____ (*indicate N/A or the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that ends after October 7, 2009*).

_____ (Date)

_____ (Signature of Designated State Agency Official)

_____ (Title)

_____ (Date)

_____ (Signature, Associate Commissioner, Children's Bureau)