

The 2008 Federal Child Welfare Law *The Fostering Connections To Success and Increasing Adoptions Act of 2008,* H.R. 6893, P.L. 110-351 (Oct. 7, 2008)

Challenges and Opportunities for the Legal Profession

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Key Areas of Focus



1. Enhancing Support of Relative Caretakers
2. Improving Outcomes for Older Youth
3. Promoting Sibling Co-Placements and Visitation
4. Federal \$ for Attorney/Judge Legal Training (Matching State \$, Increasing Each Year)
5. Education and Health Care Access
6. Strengthening Adoption
7. Indian Tribe Related Provisions

Enhancing Support of Relative Caretakers

Challenge

1. 30 days after removal to notify adult relatives (*new* IV-E requirement)
2. Defining "due diligence" in providing notice
3. Dealing with the notice *exception* (?) "due to family or domestic violence"

Opportunity

1. For lawyers to help courts & agencies identify/find relatives & develop new swift notice procedures
2. For lawyers to work with domestic violence experts to craft a sensible policy that protects safety of child & victim parent

Challenge

4. Meaning of "options...to participate in the care and placement of the child" (and lost options if there's no response)
5. Encouraging more relatives to be foster families & guardians
6. Getting more permanent kinship guardians federal \$

Opportunity

4. Lawyers can develop materials to help relatives understand options & consequences of not participating
5. Lawyers can compare kinship v. foster home \$ & how services to each differ
6. Lawyers can advocate new state guardianship laws & help caretakers secure permanent guardianships and subsidies

Challenge

7. Deciding on what a licensing “safety standard” is that must be applicable to all relative “foster care” placements
8. Using all appropriate technologies to find relatives (maternal & paternal)
9. Compliance with *new* element for Case Plans, *if* calling for permanent relative guardianship

Opportunity

7. Lawyers can review current laws/policies on waivers of non-safety factors in foster care licensing, & identify models
8. Lawyers can identify best approaches to family-finding & resources (e.g., FPLS)
9. Lawyers can encourage court review of how this is implemented

Challenge

10. Assuring that kids leaving foster care at 16 or later & living in relative guardianships get Independent Living Services and Education/Training Vouchers
11. Getting permanent relative guardianship IV-E \$ for youth post-18 (until age 21), even if employed or still in school, including post-18 Medicaid

Opportunity

10. Lawyers can propose court monitoring of ILS and ETV for youth in kinship care, especially since living with permanent relatives now doesn't disqualify youth from these services
11. Lawyers can help "make the case" for states to exercise this option

Challenge

12. To use the *new* provision mandating that states pay expenses incurred in obtaining guardianships up to \$2,000 for assuring that legal help is available to relative caretakers wishing to obtain them

Opportunity

12. Lawyers can recruit and help train additional colleagues who will be available to represent relatives in petitioning for and obtaining permanent legal guardianships

Improving Outcomes for Older Youth

Challenge

1. Convincing state CW agencies to select the *new* IV-E through 21st birthday option
2. Assuring states don't deny IV-E for older youth in GED, job readiness or training programs, employed part-time, or incapable of work due to disability

Opportunity

1. Lawyers can work through state/local bars, with legislators, & others to promote this
2. Lawyers can make other advocates, lawmakers, etc. aware of these expanded criteria for continued Title IV-E post-18 eligibility (effective 10/01/2010)

Challenge

3. If youth is adopted post-16th birthday, to assure that, if supported post-18 by adoptive parents, that IV-E \$ continue
4. Getting all transitioning youth the *new* IV-E mandated "Transition Plan" required by the law (within 90 days of 18, or 90 days prior to later exit from CW system)

Opportunity

3. Lawyers can write legal materials for adoptive parents of teens about possible post-18 subsidy \$, & work with CW agencies to achieve this
4. Lawyers can educate judges on this new requirement, convince advocates & youth to lead in this process, & provide models for participation & Plans

Challenge

5. Prepare for 10/2010 when kids over 18 in independent living settings can remain IV-E eligible if states elect that post-18 option

Opportunity

5. Lawyers can advocate on behalf of transitioning youth post-18 in IL programs, so that they can receive better and more extensive services and support (given the IV-E federal match)

Promoting Sibling Co-Placements and Visitation

Challenge

1. To fulfill the *new* IV-E requirement to keep siblings together through a *new* "reasonable efforts" mandate: That they be placed together when removed from home, if in best interests; or have frequent visits with each other unless documented harmful

Opportunity

1. Lawyers can help inform judges on this new federal law requirement, and on how to explain this "right" to child clients; lawyers can also develop policy/practice material on when co-placement is not in best interests or when visitation is harmful

Federal \$ for Attorney/Judge Legal Training

Challenge

1. Suggesting how to broadly define eligible "staff of abuse and neglect courts"
2. Helping advance the amount & quality of attorney/GAL/CASA training through this \$
3. Getting training to private agency lawyers

Opportunity

1. Lawyers can work with Court Improvement folks to have state broadly define this
2. Lawyers can provide this training & alert CW agencies about it
3. Lawyers can work with private foster care and other agencies to train their legal folks

Challenge

4. To convince CW agencies to use *new* \$ for legal training of both private agency staff and relative guardians
5. To define the scope of what IV-E "Short-Term Training" is
6. To help states maximize their IV-E training dollars (the % of federal match will be increasing each year)

Opportunity

4. Lawyers can develop curricula materials for legal training states can use IV-E \$ for
5. Lawyers can collaborate with other training providers on this
6. Lawyers can think long-term in terms of state and local training needs, since federal \$ are to be maximized in 2012 (when federal match reaches 70%)

Education and Health Care Access

Challenge

1. To assure foster children's *full-time* school placement & stability as the law requires, through CW agency/LEA teamwork that's a *new* IV-E case plan requirement
2. To assure the law's intent that foster kids be in the appropriate program for them

Opportunity

1. Lawyers can inform judges and child welfare agencies on how to engage school systems, & on how the law makes IV-E transportation \$ available to help
2. Lawyers can do more to help foster kids get proper educational assessments

Challenge

3. Implementing *new* CW state plan requirement of "Oversight & Coordination" Plans for foster children's health care oversight in consultation with the state Medicaid agency and health care experts

Opportunity

3. Lawyers can work with child/adolescent health advocates and Medicaid experts on what a model Plan should look like; they can develop a special project on how law/policy can improve foster kids' health, mental health, & dental care access to needed services

Challenge

4. Every foster child to have a plan for ongoing oversight & coordination of health care services using a coordinated strategy to identify and respond to the health care needs of that child, including mental health and dental health needs

Opportunity

4. Lawyers can work with child welfare agencies and health professionals to develop model "health care services plans" for all foster youth, and they can help educate judges on this new child's case plan requirement

Challenge

5. *Other New Requirements:*
- a) *Schedule for an initial & follow-up health screenings meeting* reasonable standards of medical practice, so that health needs so identified will be *monitored and treated*, & how medical information will be *updated and appropriately shared*, which may include development & implementation of *electronic health record*
 - b) *Continuity of health care services* which may include establishment of a *“medical home”* for every child

Opportunity

5. Educate lawyers and judges about these important new provisions to better assure the proper physical, mental, and dental health needs of all foster children

5. *c) Oversight of prescription medicines*
d) Active consultation & involvement by caseworkers with physicians/other appropriate medical or non-medical professionals, in assessing child health and well-being & in determining appropriate medical treatment for the children

5. Educate lawyers and judges about these important new provisions to better assure the proper physical, mental, and dental health needs of all foster children

Strengthening Adoption

Challenge

1. To fulfill *new* IV-E mandate that prospective adoptive parents be told about Adoption Tax Credit availability
2. Implementation of revised & expanded adoption subsidy eligibility criteria (not tied to birth family income) in 2010/later

Opportunity

1. Lawyers can produce materials on the Adoption Tax Credit & how it can benefit those adopting foster or kinship care kids
2. Lawyers can inform judges, adoption advocates, and others on the revised criteria

Indian Tribe Related Provisions

Challenge

1. To fulfill the *new* IV-E mandate that CW agencies negotiate in good faith with tribes in the development of IV-E agreements in which the state will use IV-E \$ on behalf of Indian children and help with other IV-E requirements

Opportunity

1. Child welfare lawyers can work with tribal child welfare law experts to help tribes meet all the legal IV-E requirements, & help tribes develop legal services in child welfare cases

Final Note

- **Challenge:** States can get “limited” delays in implementation of these provisions, from HHS, if they claim new legislation *is required* to implement certain provisions
- **Opportunity:** For lawyers to work with other advocates to help identify state-specific *needs* for new legislation, prepare “models” or samples of such statutory language, & otherwise provide assistance on statutory development to help states comply with the new federal law’s provisions