The Reauthorization of the Adoption Incentive Fund: Opportunities to Expand Reinvestment of State Funds into Child Welfare Services

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Introduction

This fall Congress is likely to reauthorize the adoption incentives program, a federal fund that awards states annually if they succeed in increasing the number of children adopted from foster care. The original fund was created by the 1997 Adoption and Safe Families Act (ASFA) as part of a more global strategy to push states to move some of the 560,000 children in foster care into permanent families.[1] Since its creation it has been successfully reauthorized every five years with Congress generally adjusting the adoption targets to continue to encourage states to keep up their efforts at foster care adoptions.

Before leaving for the August break, a bipartisan group of members from the House Subcommittee on Human Resources of the House Ways and Means committee released a draft version of the reauthorization.[2] The draft text proposes some changes to the formulas for rewarding states based on finalized adoptions. It also touches on the need for post adoption services and, perhaps most importantly, attempts to implement requirements passed in 2008 as part of the Fostering Connections to Success and Increasing Adoptions Act (PL110-351) that requires states to reinvest the dollars states are saving as a result of the expanded federal funding that was a major piece of that law.

This paper examines some of the issues raised by the reauthorization and the draft proposal including the award levels, reinvestments of state savings and post-adoption services.

The Adoption Incentives Fund

When Congress passed the Adoption and Safe Families Act (ASFA) (PL 105-89) in 1997, as part of a larger strategy to reduce the number of children in foster care, they created an incentive fund under Title IV-E of the Social Security Act. The incentive was to reward states if they increased adoptions from foster care. If states increased the number of children adopted from foster care over a previous year's high mark, they were awarded an incentive of $2000 to $4000 per child. Funding for the incentive was dependent on the annual appropriations, and in fact, in the first years, states were so successful in increasing their adoptions that appropriators had to add additional funding. The highest appropriation in a single year was $43 million in 2003. In recent years budget cuts and the impact of the current sequestration have reduced the awards to less than $40 million with awards set at $32 million in FY 2013. In that case, state awards are reduced accordingly.

Whether it was the impact of the incentives, the changes mandated by the ASFA, or a combination of several factors, adoptions have increased over the past decade and a half. Before ASFA, 25,700 children had been adopted from foster care in 1995. Those numbers started to increase eventually reaching over 50,000 by 2000, and the number of adoptions has exceeded more than 50,000 almost every year since, with a high of more than 57,000 in 2009 and 52,000 in the most recent year in 2012.[3]

As Congress reauthorized the funding every five years, they re-set the "baseline" or the number of adoptions a state must finalize to receive a share of the funds. This helped states that had missed out the year before because some states now had a decreased number of children in foster care reducing the potential pool of children awaiting adoption. Some of these same states that had missed an incentive in a year were still making progress despite lower numbers because their rates of adoption placements were actually higher.

State advocates should contact state child welfare and adoption officials to determine how adoption incentive funds are spent in their state. HHS posts each year's awards and has also posted a history of past awards: http://www.acf.hhs.gov/sites/default/files/main/adopt_incentive_history.pdf. Examine how much your state has received in the past and whether it is actually used to fund adoption services.

As Congress reauthorized the fund, it didn't just reset the baseline, it also refined the targeting. In the last two reauthorizations of the incentive fund, including the last one (as part of the 2008 Fostering Connections Act), Congress provided an additional incentive to encourage states to increase the adoptions of "older" children. Older children were defined as a child nine or older. This is because the children most likely to be adopted are under the age of five. Beginning at age nine, children tend to be harder to place in adoptive families. The incentive was set at $4000 per adoption increase, $4000 per special needs adoption increase and now $8000 per older child adoption increase. The latest data for 2012 indicates that of the children adopted, 49 percent were under the age of five, with children the age of two being the single biggest category of adoptions at 14 percent. Children at the age of nine through 18 represented 26 percent of those children adopted. Despite some intensive and successful models to adopt older children, only 1 percent of children 17 or older (865 youth) were adopted.[4]

A new part of the 2008 reauthorization was the inclusion of an incentive for states that increased their "rate" of adoptions. This new rate incentive was to assist states that had successfully continued to place children in adoptive families while the actual numbers of adoption went down due to decreased numbers of children in foster care. The rate however was set at $1000, much less than the other categories of awards, and it is provided to states only if there are funds leftover after the other awards for adoptions, special needs adoptions and older child adoptions are provided.

Reinvestment of State Savings into Child Welfare

In 2008, Congress enacted the Fostering Connections to Success and Increasing Adoption Act (PL 110-351). One of the major reforms included in the bill was the expansion of federal funding for Title IV-E Adoption Assistance.

Title IV-E Adoption Assistance was created in 1980 (PL 96-272) when foster care funding was separated from the Aid to Families with Dependent Children (AFDC) program. Both Title IV-E Foster Care and Adoption Assistance continued to base their eligibility on AFDC despite the separation of the two funding streams. This meant that a child that was removed from a family covered by the AFDC entitlement was covered by these two child welfare programs. States receive federal matching funds for the foster care maintenance payments or adoption assistance payments if the child is eligible. The federal government pays for 50 percent of the administrative costs and up to as much as 80 percent of foster care maintenance and adoption assistance. Federal funding is awarded to states according to the Federal Medical Assistance Percentages (FMAP/Medicaid program) matching rate. Some states receive a 50 percent match (meaning half the costs are paid by the federal government) and some of the poorest states may receive a match close to 80 percent (meaning $4 out of every $5 is paid for by the federal government).

When Congress repealed the AFDC program and its individual entitlement in 1996 by creating the Temporary Assistance for Needy Families (TANF) block grant, it also did away with the eligibility requirements. Because AFDC would no longer exist, Congress had to determine how Foster Care and Adoption Assistance eligibility would be addressed. In a temporary fix, Congress directed states to continue to determine eligibility for the two programs based on the 1996 version of AFDC eligibility as it existed in each state.

For the next twelve years discussion were held and bills were introduced to do away with this "AFDC link" or "look-back" to the 1996 AFDC eligibility. There was no consensus and no willingness to provide the increased federal funding. Finally in 2008, as part of the Fostering Connections to Success Act, Congress agreed to address the Adoption Assistance part of the eligibility issue. The Act gradually extends Title IV-E funding to all families receiving adoption assistance for a special needs child by 2018.

States have discretion in defining what "special needs" is, but in FY 2012, 85 percent of children were considered special needs.[5] Special needs may be a child with a disability, a health need or a special needs child, a child that is a part of a sibling group or a child more difficult to place due to their age or other factors. The expansion of eligibility will be phased in between the years 2010 through 2018 as a way to spread out the cost of the legislation to the federal government.

In 2010, all new special needs adoptions of children 16 or older were covered. In 2011, all special needs adoptions of children 14 and older were covered. Each year, the coverage expands by two years until by 2018 all special needs child adoptions are eligible for federal funding.

As part of every bill that is passed by Congress, the Congressional Budget Office (CBO) conducts an analysis of how much each part of the legislation costs, as well as calculating any savings that is included in the bill to reduce that cost. The Adoption Assistance program delink was projected to cost the federal government nearly $1.5 billion over ten years. Much of this new cost will be realized in 2018 when the eligibility is fully expanded and the youngest of the age groups (and the largest share of adoptions) are covered by federal funding. By 2018, federal budget costs are projected to reach just under $500 million in that year.[6]

As a result of this significant infusion of federal funding into state child welfare spending, Congress included language into the Fostering Connections Act that said,

> *"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 post-adoption services) that may be provided under this part or part B."*[7]

Each state will actually have a different share of savings because some states receive a higher share of federal funding due to the FMAP formula. In addition, state savings will differ given that states also vary in the percentage of special needs adoptions that are covered as a result of the old AFDC link. Regardless, all states will receive some savings especially as we get closer to 2016, 2017, and 2018 phase-ins, when the youngest and largest numbers of children will be eligible for federal funds.

State advocates should know what their matching rate is: http://aspe.hhs.gov/health/fmap12.shtml. The FMAP rate may be as low as 50 percent (meaning your state receives a dollar for dollar match) to a high of nearly 75 percent. A 75 percent match would mean for every $100 spent on adoption assistance, $75 would be paid by the federal government.

Despite the reinvestment language, the Department of Health and Human Services did not establish strong guidance on how states would be held accountable for determining the amount of savings or how it would be reinvested to make their own determinations on how to meet this requirement in the new law. In its guidance (ACYF-CB-PI-10-11)[8] issued in June 2010, the ACYF instructed states with:

> *"A title IV-E agency 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 (section 473(a)(8) of the Act). The agency must provide a certification that this requirement is being met in the title IV-E plan (see ACYF-CB-PI-09-08). 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. At this time, we are not issuing further policy in relation to the provision."*

As a result, in 2011, Congress amended the reinvestment directive. When Congress reauthorized the two Title IV-B child welfare programs through the Children and Family Services Improvement and Innovations Act (PL 112-34), they amended the reinvestment language by including:

> *"and shall document how such amounts are spent, including on post-adoption services"*

Despite this, no real documentation or direction to states has taken place, and it is unclear, except in perhaps a few instances, how states are responding to this congressional directive to reinvest state savings back into child welfare services.

The Significance of Reinvestment Funds for Child Welfare

The savings projected by the Congressional Budget Office are not exact, but are based on various economic models and calculations in an attempt to guide congressional spending. They are also the basis for assuring that when any new child welfare spending is enacted, it is paid for by finding savings in other parts of the federal budget. Frequently, that savings is found by finding savings in other parts of the federal child welfare budget. This meant that Congress had to find the $1.5 billion in expanded adoption assistance spending from somewhere else in the budget. The Fostering Connection Act was 'budget neutral" meaning Congress did find savings so it had every incentive to assure that states wouldn't just take the new funding and cut state child welfare spending in return.

The reinvestment of state savings is also significant for another critical reason: child welfare finance reform. Ever since the AFDC look-back was put into place, there has been an ongoing and at times vigorous debate about how to restructure child welfare spending. A great deal of that debate has focused on how to expand foster care funding and how to expand child welfare funding to other services, especially services that can prevent child maltreatment or at least prevent the removal of a child from his or her home. One of the central tenants of any finance reform action is that states would have to reinvest any additional federal support back into child welfare services—especially those that can prevent abuse and keep families intact. In fact, states have argued that a reform of child welfare funding would allow them to capture any savings from reduced placements into foster care and to reinvest that saving back into services.

To date, there has been little national guidance to assure that the savings is reinvested, but there is still time. The biggest savings will come in the next five years. Even if the CBO is off in its projections of savings for states, in 2018, when the largest population of children (infants and toddlers) are fully covered, a savings significantly less than the $500 million would still represent a large and important reinvestment of funds into state child welfare systems. Under the sequestration, Title IV-B Child Welfare Services in 2013 is less than $270 million. A reinvestment of state funds could be critical to funding prevention and intervention services.

Post Adoption Services

With the significant increase in adoptions over the past decade and a half, there are many more families across the country that have provided permanent loving families for children who had previously been in foster care. More than 450,000 children are benefiting from adoption assistance, and as these children and families grow older, there is an increased need for services and support to help them address any challenges or issues that may surface years later. As a result, there has been an increased focus on the need to provide post adoption services.[9]

Post adoption services can include a range of services. Challenges can be diverse for these families and children, and so there is a need for a range of supports. These services may include support groups for parents and child, on-line support, support groups that are available 24 hours a day, camps, retreats that include therapy and counseling, guidance on child attachment, timely interventions by trained professionals skilled in child psychology and adoption issues, respite care, and information and referral services.

State advocates should ask their adoption agency officials and their state legislators how their state is investing any savings. Starting on October 1, 2013, all special needs children 8 years of age or older are eligible to be covered by federal adoption assistance funding and some states (Minnesota most recently) have included legislative language to reinvest state savings back into adoption services.

The Proposed Bill

The current bill draft released for discussion would restructure the current adoptions incentives to reward overall increases in adoptions; increases in older child adoption (still set at nine years and older), and it would create a new incentive for placements from foster care into subsidized guardianships. In addition, all incentives would be based on an increase in adoption rates.

There are three significant changes from the current law. In the first case, it eliminates the increase based on *actual numbers* and awards all incentives based on the *rates*. The second significant change is the addition of an incentive based on placement into subsidized guardianships from foster care. Under the proposed draft, the term 'foster child guardianship' means the placement into legal guardianship of a child who, at the time of the placement, was in foster care under the supervision of the State. This would not reward all guardianships, such as children directly placed into the TANF program as a diversion, but could possibly, depending on future guidance and implementation, include a child moved from foster care into TANF while in state custody. The proposed bill also leaves out the separate category of special needs adoptions. 85 percent of adoptions from foster care were considered special needs in 2012.

In addition, the legislation attempts to strengthen the reinvestment requirements first included under Fostering Connections to Success Act. The new language would direct:

> *"(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.*
> *"(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.*

"(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) 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 this part or part B, and shall spend not less than 20 percent of any such savings on post-adoption services.".

It would also require states to outline how they are reinvesting funds.

Finally it would require that of the funds reinvested into child welfare services, 20 percent be allocated to post-adoption services.

Conclusion and Action Steps

In the next few weeks Congress will have to act to reauthorize the adoption incentive fund. In addition to action by the House of Representatives, the Senate will also have to act on their own legislation, and then both sides will have to come to an agreement. State advocates should contact their Senators and Congressional Representatives and ask them to include language in the Adoption Incentives Reauthorization bill to make sure that any funds the states save because of increased federal adoption support (adoption assistance) be re-invested into child welfare and adoption services.

When the bill is enacted, no matter what legislative changes are made, there is existing language in the law instructing states to reinvest savings into child welfare services. It is important for state advocates to make sure that happens.

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The State Policy Advocacy and Reform Center (SPARC), an initiative funded by the Annie E. Casey Foundation and Jim Casey Youth Opportunities Initiative, aims to improve outcomes for children and families involved with the child welfare system by building the capacity of and connections between state child welfare advocates. SPARC is managed by First Focus. You can visit us online at www.childwelfaresparc.org or on Twitter at @ChildWelfareHub..

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Notes

[1] Ways and Means Committee, U.S. House of Representatives. (2004). *The 2004 Green Book, Table 11-87Section 11-Child Protection, Foster Care, and Adoption Assistance.* U.S. Government Printing Office, Washington DC.

[2] Ways and Means Committee, U.S. House of Representatives. (2013). Press Release, *Draft Legislation to Extend the Adoption Incentives Program*. http://waysandmeans.house.gov/adoptionincentives /.

[3] U.S. Department of Health and Human Services, Administration on Children, Youth, and Families. (2012). *Adoption of Children with Public Child Welfare Agency Involvement By State, FY 2003 through 2012.* Retrieved August 22, 2013, from http://www.acf.hhs.gov/sites/default/files/cb/children_adopted.pdf.

[4] U.S. Department of Health and Human Services, Administration on Children, Youth, and Families. (2013). *The AFCARS Report 2012, Report #20.* Retrieved August 22, 2013, from http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport20.pdf.

[5] U.S. Department of Health and Human Services, Administration on Children, Youth, and Families. (2012). *Children Identified as Special Needs Adoptions: October 1, 2011 to September 30, 2012.* Retrieved August 22, 2013, from http://www.acf.hhs.gov/sites/default/files/cb/special_needs2012.pdf.

[6] Congressional Budget Office (CBO). (2008) *H.R. 6893, Fostering Connections to Success and Increasing Adoptions Act of 2008*. (2008). from: http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/99xx/doc9955/hr6893.pdf.

[7] This refers to the scheduled expansion of federal funding for adoption assistance. Gradually more children are covered each year: 2010 all children 16 and older, 2011 all children 14 and older, 2012 at children 12 and older, 2013 all children 10 and older, 2014 all children 8 and older, 2015 6 and older, 2016 4 and older, 2017 all children 2 and older and 2018 all children.

[8] U.S. Department of Health and Human Services, Administration on Children, Youth, and Families. (2010). ACYF-CB-PI-10-11. *Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008.* http://archive.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2010/pi1011.htm.

[9] Department of Health and Human Services. (2013). *Budget in Brief. Washington DC taken from:* http://www.hhs.gov/budget/fy2014/fy-2014-budget-in-brief.pdf.