

**REPORT OF THE VIRGINIA
DEPARTMENT OF SOCIAL SERVICES**

**Options for Implementing the
Extension of Foster Care
Maintenance and Adoption
Assistance Payments for
Individuals Up to 21 Years of Age
(SJR 282, 2013)**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 7

**COMMONWEALTH OF VIRGINIA
RICHMOND
2014**



COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

January 3, 2014

Honorable Robert F. McDonnell
Governor of Virginia

Members of the Virginia General Assembly
General Assembly Building
Richmond, Virginia 23219

Dear Governor McDonnell and Members of the Virginia General Assembly:

Enclosed please find the report required by Senate Joint Resolution No. 282 (2013) in which the General Assembly requested the Department of Social Services to develop and present options for implementing the extension of foster care maintenance and adoption assistance payments for individuals up to 21 years of age. Please do not hesitate to contact me with questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Margaret Ross Schultze".

Margaret Ross Schultze
Commissioner

MRS:kc

Attachment

**REPORT ON
OPTIONS FOR IMPLEMENTING THE EXTENSION OF FOSTER CARE MAINTENANCE AND
ADOPTION ASSISTANCE PAYMENTS FOR INDIVIDUALS UP TO 21 YEARS OF AGE**

PREFACE

In Senate Joint Resolution No. 282 (2013), the General Assembly requests the Department of Social Services to develop and present options for implementing the extension of foster care maintenance and adoption assistance payments for individuals up to 21 years of age. DSS is to complete its work by November 30, 2013, and the report is due to the Governor and the General Assembly for the 2014 session. Staff from the Department of Social Services' Division of Family Services prepared this report.

**REPORT ON
OPTIONS FOR IMPLEMENTING THE EXTENSION OF FOSTER CARE MAINTENANCE AND
ADOPTION ASSISTANCE PAYMENTS FOR INDIVIDUALS UP TO 21 YEARS OF AGE**

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REPORT ON OPTIONS FOR IMPLEMENTING THE EXTENSION OF FOSTER CARE MAINTENANCE AND ADOPTION ASSISTANCE PAYMENTS FOR INDIVIDUALS UP TO 21 YEARS OF AGE

Executive Summary

This report was required by Senate Joint Resolution No. 282 (2013), in which the General Assembly requested the Department of Social Services (DSS) to develop and present options for implementing the extension of foster care maintenance and adoption assistance payments for individuals up to 21 years of age.

In 2008 Congress passed the Fostering Connections to Success and Increasing Adoptions Act of 2008 (the Act). The Act addressed new provisions in a number of areas in Titles IV-B and IV-E of the Social Security Act (P.L. 110-351) including the option to access federal funding to extend foster care, adoption assistance and, if the state has one, guardianship programs, up to age 21. Virginia does not have a guardianship program at this time, so the provisions would only apply to Virginia's foster care and adoption programs.

While it is difficult for most states, including Virginia, to track youth leaving foster care, there are national studies which have focused on the topic and confirm what most people and organizations suspect – most youth are still in need of services and support after age 18. In their paper *Cost Avoidance: The Business Case for Investing in Youth Aging Out of Foster Care*, the Jim Casey Youth Opportunities Initiative states that every year, nearly 26,000 young people age out of foster care without permanent families or support. The outcomes associated with this include homelessness, lack of education and criminal involvement. The paper states the estimated lifetime cost to taxpayers to be \$8 billion. For each state, that is \$300,000 per youth for each cohort year.

Seventeen states and the District of Columbia have implemented the provisions of the Act to extend foster care and adoption assistance to age 21. There are three more state's pending approval with the Administration for Children and Families (ACF) and two states have extended foster care services and adoption assistance agreements using state money.

In 2012, the DSS contracted with the Finance Project, an organization that had been providing cost/benefit analysis for multiple states, to produce a report for DSS to be submitted to the Senate Rehabilitation and Social Services Committee. The Executive Summary for that report is included here and the entire report is posted on DSS's public website. Appendix 1 has information on accessing this report.

http://www.dss.virginia.gov/files/about/reports/children/foster_care/2012/studies/FINAL_Extending_FC_Adop_Assistance.pdf

If the General Assembly determines that Virginia should extend foster care and adoption assistance to age 21, there are decisions that need to be made including:

- What parameters to put around the educational or employment efforts needed to be eligible;

- What range of supervised independent living arrangements will be acceptable;
- Will youth be allowed to leave and opt back in to the program- how many times; and,
- What is the role of legal counsel for youth over age 18 and what is the role of the court.

What Virginia is learning from states that have already implemented is the importance of careful planning. Making sure that local departments of social services, the court system, providers and other state agencies are all on the same page with a clear understanding of how the provision of services to older youth will work is critical. If legislation is proposed for the 2014 General Assembly to implement the Act, DSS recommends a delayed implementation.

Other considerations that support delaying the implementation for at least a year include upgrades that must be made to the child welfare information system as well as all reports that are produced from this system. In addition, Virginia may not draw down federal funds to support this program until an approvable plan has been presented to the Administration for Children and Families.

REPORT ON OPTIONS FOR IMPLEMENTING THE EXTENSION OF FOSTER CARE MAINTENANCE AND ADOPTION ASSISTANCE PAYMENTS FOR INDIVIDUALS UP TO 21 YEARS OF AGE

PROGRAM BACKGROUND

In 2008 Congress passed the Fostering Connections to Success and Increasing Adoptions Act of 2008 (the Act). The Act addressed new provisions in a number of areas in Titles IV-B and IV-E of the Social Security Act (P.L. 110-351) including:

- Transition plans for emancipating youth;
- School enrollment and stability;
- Healthcare oversight;
- Waivers for relatives on non-safety approval standards;
- The option for guardianship assistance; and,
- The option for extending foster care to age 21.

This report addresses the options the Act provides for extending foster care and adoption assistance to individuals up to age 21 (Appendix I). While Virginia has been working to address the mandates in the Act, there has not been movement on the optional provisions; guardianship assistance and extending foster care for individuals up to 21. Last year, in response to a request from the Senate Committee on Rehabilitation and Social Services, the Department of Social Services (DSS) submitted a report detailing a cost benefits analysis of extending foster care to age 21. DSS contracted with the Finance Project, an organization that had been providing this type of analysis for multiple states. Summary information from the report submitted in 2012 is included in this report. The 2012 report is posted on the Department of Social Services' public website.

http://www.dss.virginia.gov/files/about/reports/children/foster_care/2012/studies/FINAL_Extending_FC_Adop_Assistance.pdf Information on accessing the 2012 report is in Appendix II.

In order to draw down Title IV-E funding to support the provisions of the Act, states must submit amendments to their Title IV-E state plans with documentation of their intention to implement the provisions. This includes changes to state code, regulation and guidance to support implementation. Virginia submits their Title IV-E plan and its revisions to the U.S. Department of Health and Human Services through the Region III Office of the Administration for Children and Families (ACF).

Federal Eligibility Requirements for Extending Foster Care and Adoption Assistance

While discussions in the community and among advocates generally use the language "extending foster care," the Act requires that foster care, adoption assistance and, if the state has one, the guardianship program, are included in the extended assistance. Virginia does not currently have a guardianship program.

The Act provides for extending foster care to age 21 (or to age 19 or 20 if the state makes that determination). If a state decides to extend to age 19 or 20 rather than 21 the state must

provide a written programmatic or practice rationale for deciding on a lower age. If Virginia chooses to extend foster care beyond 18, the definition of “child” must be changed to allow for the state to provide foster care, adoption and, if applicable, guardianship assistance to eligible youth up to the age selected. DSS does not have a programmatic or practice rationale to support extending foster care and adoption to age 19 or 20 as opposed to 21, if the General Assembly chooses to support extending this assistance.

Title IV-E provides that a youth may continue receiving IV-E maintenance payments past age 18 if they are a full-time student expected to complete secondary education or training by age 19. This is true whether or not a state extends foster care under the Act and it is a provision that Virginia currently uses for its youth.

Title IV-E also currently provides in Section 473 that states may continue adoption assistance until age 21 if the child has a mental or physical handicap which warrants the continuation of assistance. Virginia uses this provision currently. Federal criteria include:

1. To be eligible for participation in the extension of foster care and adoption assistance benefits under the Act a youth must:
 - Be in foster care under the care and placement of the Title IV-E agency (DSS); or
 - Be part of an adoption assistance agreement in effect under Title IV-E and signed after the youth turned 16; or
 - Be part of a kinship guardianship agreement signed prior to the youth turning 16 (Virginia does not have a kinship guardianship program); AND
2. Have attained the age of 18 or older, up to age 21 (as elected by the state);
AND
3. Meet at least one of the below listed conditions (as determined by the state):
 - Be completing secondary education or a program leading to an equivalent credential;
 - Is enrolled in an institution which provides post-secondary or vocational education;
 - Is participating in a program or activity designed to promote, or remove barriers to employment;
 - Is employed for at least 80 hours per month; or
 - Is incapable of doing any of the previously described education or employment activities due to a medical condition.

Virginia can choose to allow youth to continue foster care services beyond age 18 or to leave for a period and return to foster care at some point after age 18. If the youth remains continuously in foster care, Title IV-E eligibility does not need to be reestablished. However, if Virginia chooses to allow youth to leave foster care and return after age 18 (similar to current practice with Independent Living services), Title IV-E eligibility for both the removal from home criteria of section 472(a)(2)(A) of the Social Security Act and the placement and care responsibility of 472(a)(2)(B) must be reestablished.

Removal from home criteria for a youth 18 or over returning to foster care may be met by:

- Court-ordered removal – to the extent there is jurisdiction by the juvenile court, or
- Voluntary placement agreement entered into between the youth age 18 or older and the Title IV-E agency. This option is available only if the state determines it will accept these agreements with youth.

Placement and care responsibility can be obtained for a youth 18 or over returning to foster care through:

- The youth may written authorization for the continuation of responsibility prior to turning age 18 and ending court jurisdiction or agency care and placement responsibility, or
- Voluntary placement agreement entered into between youth age 18 or older and the Title IV-E agency (if the state determines it will accept voluntary placement agreements with youth), or
- Court orders to the extent the juvenile court maintains jurisdiction.

Assistance to Families with Dependent Children (AFDC) program criteria:

For a youth re-entering foster care after age 18, AFDC eligibility is based on the youth without regard to parents or others in the assistance unit. However, because a youth over 18 would not be able to meet redetermination standards, in order to be consistent with the intent of the Act, ACF states in its Program Instruction dated July 9, 2010 (ACYF-CB-PI-10-11), that they will not review whether annual reviews are conducted on these youth.

Other Federal Requirements

In addition to the eligibility requirements above, there are requirements for areas including: supervised independent living settings; maintenance payments; permanency plans; case reviews; caseworker visits; and data collection.

Supervised independent living settings

Placements for youth over 18 in licensed or approved foster family homes or in child-care institutions must meet the requirements for approval and backgrounds checks. More discretion is allowed in determining supervised independent living arrangements. The state may determine a range of housing options as independent living arrangements that will meet the needs of youth and may determine which must be licensed and what safety protocols may be appropriate. This can include semi-supervised arrangements, college dorms or family settings. The states' determinations as to types and requirements for supervised independent living settings must be included in the approved IV-E state plan.

Foster care maintenance payments

Maintenance payments for youth over 18 and the amounts are consistent with payments for youth of any age. When a youth over 18 is living in a supervised living setting, there may not be

a provider involved and the IV-E agency may determine that all or part of the foster care maintenance payment be paid directly to the youth.

Permanency plan and judicial oversight

Requirements for a permanency plan continue to apply to a youth over 18 who was removed from the home due to a contrary to the welfare judicial finding. These requirements do not apply to a youth who came into care under a voluntary placement agreement. It is expected that youth over age 18 will have plans that address preparing the youth for independence. While judicial review of the plan is required, it does not have to be at a court hearing if there is another process that can meet the requirement. Case review requirements that apply to youth under age 18 also apply to those over 18.

Caseworker visits

The same standards that apply to the monthly visits for youth under age 18 apply to those over 18. In addition, caseworker visit data must be collected and entered into the case management system. Monthly worker visit data is reported to ACF.

Data collection and federal reviews

Youth over the age of 18 must be included in the OASIS and National Youth in Transition (NYTD) databases. They must be included in the Adoption and Foster Care Analysis and Reporting System reports and will be included in child and family services and Title IV-E reviews conducted by ACF. If a decision is made to extend foster care and adoption assistance to those age 18 and over in Virginia, there will need to be changes to the information systems.

Comprehensive Services Act (CSA) and State Funded Children

The Office of Comprehensive Services provides foster care funding and services through their processes for children eligible under the CSA. Under § 2.2-5211(3) of the Code of Virginia, this includes “3. Children and youth for whom foster care services, as defined by § 63.2-905, are being provided.” Some children and youth are eligible for Title-IV-E funding of their maintenance costs. If foster care services are extended to youth up to age 21, they will still fall under § 63.2-905 and CSA will determine eligibility for those youth in the same way services and state maintenance are currently determined.

Costs to Implement

As shown on the summary table below, during the first year of implementation, Virginia’s general fund will see an estimated cost savings in foster care and an increase in adoption assistance expenditures, for an estimated net increase of \$1.5 million dollars. It is estimated that the second year will also result in similar savings/increases for a net increase to Virginia’s general fund of \$2.2 million dollars.

Extended Program	FY 2015			
	Federal	State GF	Local	Total
Foster Care	\$7,144,04	\$(400,169)	\$16,237	\$ 6,760,141
Adoption Assistance	\$1,168,933	\$1,907,207	\$0	\$3,076,140
	\$8,313,007	\$1,507,038	\$16,237	\$9,836,281

Extended Program	FY2016			
	Federal	State GF	Local	Total
Foster Care	\$6,970,575	\$(266,176)	\$62,556	\$ 6,766,955
Adoption Assistance	\$1,491,014	\$2,432,707	\$0	\$3,923,721
	\$8,461,589	\$2,166,531	\$62,556	\$10,690,676

For youth in foster care, an estimated 79 percent of localities match state funding at varying levels depending on the assistance they offer and the number of youth they serve. Virginia, extending foster care to age 21, will be eligible to recover Title IV-E reimbursable costs for extending benefits to older youth statewide, thereby freeing up state and local funds for re-investment. For adoption assistance, the Act would allow Virginia to extend adoption assistance to youth adopted at 16 years of age or older to 21 without the mental or physical restriction. In the first and second fiscal years, DSS would be able to offer adoption assistance to an additional 167 and 201 youth, respectively, until the age of 21.

Implementation in Other States

As of October 1, 2013, 17 states and the District of Columbia have approved Title IV-E plan amendments, two states have plan amendments pending and three states have extended foster care to 21 using state funds rather than opting into the provisions in the Act.

The following table shows the states implementing the extension of foster care:

Alabama	Arkansas
California	Washington D.C.
Illinois	Indiana
Maine	Maryland
Michigan	Minnesota
Nebraska	New York
North Dakota	Oregon
Tennessee	Texas
Washington	West Virginia

Massachusetts and Pennsylvania have pending Title IV-E plan approvals. Florida, Delaware and Vermont have extended foster care to 21 using state funds as opposed to opting into the provisions of the Act.

California and Indiana presented their implementation of the Act at the October 2013 National Governor's Association's Human Services Policy Advisors Institute. Both states emphasized the planning and training that needs to occur prior to implementation. Alishea Hawkins of the Indiana Department of Child Services indicated that Indiana began planning in 2009 and implemented in 2012. Because of the collaborative effort between the older youth and the state, their program is called "Collaborative Care." Lindsay Elliott of the Children's Law Center in California discussed the need for training and some of the issues California is facing as they move into phase II of their implementation. To access handouts from their presentations, contact information for Ms. Hawkins and Ms. Elliott are available in Appendix II.

One issue raised is problems with youth residing out of state. There is confusion as to how to approve homes and provide services when the requesting state has foster care to age 21 and the receiving state does not. In addition, the Interstate Compact on the Placement of Children (ICPC) does not address older youth. The terminology used by the ICPC is child and ICPC address children moving across state lines for purposes other than foster care.

Howard Davidson, Director of the American Bar Association's Center on Children and the Law raised some issues that were published in the Nation Resource Center for Youth Development's Summer 2013 eUpdate. Some of those issues, which Virginia also needs to consider if it chooses to extend services to age 21, are:

- The court's role in post 18 cases;
- The role of the youth's lawyer;
- Specific post-18 services must be provided; and,
- The right of a youth who has left foster care to re-enter care.

Mr. Davidson surveyed states that have opted to extend to 21 and found that many did not clearly address these issues, particularly the role of the youth's attorney. If Virginia decides to move forward with extending foster care and adoption assistance, there are now many states with experience that Virginia can learn from in moving forward. Access to Mr. Davidson's eUpdate and contact information are available in Appendix II.

Code of Virginia Changes

The Act requires that states have a definition of "child" that includes an individual up to age 21, or another age selected by the state. The best way for Virginia to do that would be to expand the definition of in § 63.2-100 of the Code of Virginia in a way that limits the expansion to the purposes of providing extended foster care and adoption assistance. In addition to the definition of "child," the sections in Title 63.2 that will require changes are those in Chapter 9 addressing independent living services. These sections have been amended in recent years to extend independent living services for youth until age 21 and will require careful revision or replacement to ensure clarity in the provision of services to youth to age 18.

It does not appear from initial reviews that changes would be needed to Title 16.1, Courts Not of Record, as the juvenile and domestic court currently has the authority under § 16.1-242 to retain jurisdiction over youth already before the court until the age of 21.

It also does not appear that Code sections related to the Comprehensive Services Act would need to be changed, as current law provides authority for youth receiving services under § 63.2-905 of the Code. This is the section setting out foster care services.

There may need to be a change to § 63.2-1302 of the Code to allow adoption assistance agreements for youth who meet the requirements of the Act to extend until age 21.

APPENDIX I

SENATE JOINT RESOLUTION NO. 282

Requesting the Department of Social Services to develop and present options for implementing the extension of foster care maintenance and adoption assistance payments for individuals up to 21 years of age. Report.

Agreed to by the Senate, February 5, 2013
Agreed to by the House of Delegates, February 19, 2013

WHEREAS, foster care maintenance payments provide financial assistance to foster families providing care for children placed in foster homes by a local department of social services or licensed child-placing agency following removal of a child from his or her own home; and

WHEREAS, adoption assistance payments facilitate adoptive placements and ensure permanency for children with special needs by providing financial assistance to families who adopt a qualifying child; and

WHEREAS, foster care maintenance ends when a child reaches the age of 18, or the age of 19 if the child is completing secondary education, and adoption assistance also ends when a child reaches the age of 18, unless the child has a disability warranting continuation of assistance, in which case assistance may be provided until the individual reaches the age of 21; and

WHEREAS, federal law permits states to extend foster care maintenance and adoption assistance payments funded through federal programs until the qualifying former foster child or adopted person reaches the age of 21; and

WHEREAS, extending foster care maintenance and adoption assistance payments to allow payments to be made until the former foster child or adopted person reaches the age of 21 may improve placement rates, provide greater permanency, and lead to better outcomes for foster children and children with special needs who are adopted; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Department of Social Services be requested to develop and present options for implementing the extension of foster care maintenance and adoption assistance payments for individuals up to 21 years of age.

In developing options for the extension of foster care maintenance and adoption assistance payments for individuals up to 21 years of age, the Department of Social Services shall review state and federal law and regulations governing foster care maintenance and adoption subsidy payments, meet with stakeholders to identify and evaluate options, and develop a plan for implementation of a program of foster care maintenance and adoption subsidy payments to age 21, which shall include specific proposals for legislative, regulatory, and budgetary actions necessary to implement such program.

All agencies of the Commonwealth shall provide assistance to the Department of Social Services, upon request.

The Department of Social Services shall complete its work by November 30, 2013, and shall submit to the Governor and the General Assembly an executive summary and a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2014 Regular Session of the General Assembly and shall be posted on the General Assembly's website.

APPENDIX II

- *Extending Foster Care and Adoption Assistance to Age Twenty-One*, a report by the Department of Social Services to the Senate Rehabilitation and Social Services Committee is posted on the Virginia Department of Social Services website. The link to that report is:

http://www.dss.virginia.gov/files/about/reports/children/foster_care/2012/studies/FINAL_Extending_FC_Adop_Assistance.pdf

- Presenters at the October 2013 National Governor's Association's Human Services Policy Advisors Institute:
 - Lindsay Elliott, JD, MSW, Children's Law Center of California
elliottl@clccal.org
 - Alishea Hawkins, M.A. Assistant Deputy, Services & Outcomes
Indiana Department of Child Services
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- Howard Davidson, J.D., Director, American Bar Association Center on Children and the Law
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<http://www.nrcyd.ou.edu/eupdate-summer-2013-feature>

