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Personal Responsibility and Work Opportunity Reconciliation Act of 1996

Sizing Up the Welfare Act's Impact on Child Protection

by Mark Hardin

Families involved in the child protection system undoubtedly will feel the effect of the new welfare law, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.¹ Any practitioner in this area will need to be familiar with the potential effects of the provisions outlined below.

I. The New Welfare Law Amends the Adoption Assistance and Child Welfare Act

A. New Kinship Care Requirements

The state must now "consider giving" preference to adult relatives over nonrelative caregivers when choosing a placement for a child, provided the relative caregiver meets relevant state child protection standards.² Whether this requirement merely requires the state to adopt an overall policy concerning placement with relatives or requires the state to consider placing children with relatives in each case is unclear. If states

are required to consider relative placement in each case, agencies may need to redesign forms and policies. This may give lawyers new support in persuading agencies to evaluate and approve potential relative caretakers.

B. Federal Payment to For-Profit Child Care Institutions

For the first time, federal foster care matching funds may be used to pay for the care of foster children living in a for-profit child care institution.³ However, for-profit child care institutions still may not receive and disburse federal payments for children in foster family homes or child care institutions⁴ and may not arrange for children's adoption.⁵

Why does the law permit payment of matching funds to for-profit agencies in some instances but not in others? Perhaps Congress concluded that for-profit agencies can provide good institutional care, but the profit motive

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¹ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

² *Id.* § 505 adds 42 U.S.C. § 671(a)(18), a new requirement for state plans under Title IV-E of the Social Security Act.

³ *Id.* § 501 amends 42 U.S.C. § 672(c)(2) to delete the term "nonprofit."

⁴ 42 U.S.C. § 672(b), which limits the use of foster care maintenance payments to for-profit entities, was not amended. Thus, while foster care maintenance funds may pay for a child in a for-profit child care institution, they may not be passed through a for-profit child placement or child care agency.

⁵ Under 42 U.S.C. § 673(a)(1)(B), no federal matching funds are allowed for adoption assistance if the adoption is handled by a for-profit private agency.

Advocacy Strategies for Child Welfare Advocates

State and local implementation of the welfare legislation raises issues of concern both to legal advocates for child and families and to state child protection agencies. Advocates should make contacts with agency officials, and work together to cope with the effect of the changes, and plan legislative and administrative advocacy efforts. Possible projects for collaboration include:

SSI Changes

Ensure that in the redetermination process, child protection agencies are ready and able to advocate the continued Supplemental Security Income (SSI) eligibility of disabled children in foster care. Also, plan for other foster care funding sources for children who lose SSI eligibility. Plan a system to track the number of families who seek help, or foster care placements, for children who have lost SSI eligibility.

Restriction on Temporary Assistance for Needy Families (TANF) Benefits to Minors Living Apart from Parents or Guardians

Urge state officials to involve the child protection agency in all decisions about the appropriateness of a home for a minor parent and her child (for instance, by referring these cases to the agency, outstationing child protection workers in welfare offices, or training welfare eligibility workers in making these decisions). Also use this provision to generate increased support for residential programs for teen parents and their children.

Relative Caregivers

Urge state welfare officials to continue aid to relative caregivers and to exempt them from the five-year lifetime limit and from work requirements if they are caring for a child who would otherwise be in foster care.

Restriction on TANF Benefits for Children Absent from the Home

Urge state welfare officials at least to exempt families with children in foster care who are working toward prompt reunification from the 45-day absence rule or, preferably, to create a new rule specifically for these parents, thereby allowing early start-up of cash assistance in preparation for a child's return home.

Emergency Assistance Funds

Ensure that family support services that are currently funded with emergency assistance funds will be funded either with the new Temporary Assistance for Needy Families (TANF) block grant funds or from other sources. If the state is willing to use TANF funds for these purposes, suggest that the state transfer some TANF funds to the Social Services Block Grant (Title XX), so that services provided with these funds do not count toward the families' five-year lifetime limit on benefits.

Benefits Cutoff for Persons Involved in Drug Crimes

Urge state officials to opt out of the provision denying benefits to persons involved in drug crimes, or at least modify it in the state plan, so as not to jeopardize families' chances for recovery, reunification, and economic stability after treatment for addiction.

Restrictions on Benefits to Immigrants

Urge states not to opt to deny Medicaid and TANF funds, and Title XX services, to legal immigrants. Inform state officials about the numbers of immigrant families with children who currently receive assistance, and what might happen if their eligibility were cut off (e.g., increases in foster care placements). In states that opt to deny benefits to immigrant families, seek alternative sources of help for these families and track the impact of benefits cutoff on foster care caseloads.

continued

Advocacy Strategies for Child Welfare Advocates (con'd)

TANF Lifetime Benefit Limits and Work Requirements

Urge state legislators not to adopt lifetime benefit limits of less than five years and to include in the hardship exemption families affected by domestic violence, families with a disabled child or other family member, and relative caregivers of children who would otherwise be in foster care.

Also ensure that children do not enter foster care because their parents who are required to participate in work programs leave their children at home without adequate child care. Child protective agencies should identify these cases by inquiring about parents' access to child care and should work to preserve child care funding earmarked for protective supervision cases.

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should not affect decisions concerning where and how to place children. This would explain why the law permits the payment of federal funds for children in for-profit child care institutions only when public agencies or nonprofit private agencies disburse the payments.

C. Eligibility for Federal Foster Care and Adoption Assistance Payments

The new law affects children's financial eligibility for federal foster care and adoption assistance matching funds. A new amendment requires child protection agencies, when determining children's eligibility for federal foster care or adoption assistance payments, to apply the Aid to Families with Dependent Children (AFDC) eligibility requirements that were in effect in the state on June 1, 1995.⁶

Note that the eligibility of individual children for federal foster care and adoption assistance matching funds has long been based, in part, on whether the child is eligible for AFDC before removal from the home or placement in foster care.⁷ In the past, eligibility depended on AFDC

criteria in effect when the child entered care or was placed for adoption.⁸ The repeal of AFDC⁹ and its replacement by the new Temporary Assistance for Needy Families (TANF) block grant¹⁰ makes it impossible to base federal foster care and adoption assistance eligibility on current or future AFDC criteria.

Because fewer children are likely to be eligible for TANF than would have been eligible for AFDC, basing foster care and adoption assistance eligibility on TANF would probably reduce the number of children eligible for federal foster care or adoption assistance.

The change in the law presents two possible practical difficulties:

1. The New Law Does Not Account for the Effects of Inflation

As prices and incomes rise, fewer children and families will meet states' 1995 AFDC eligibility standards. Thus, unless the law is amended, fewer children will be eligible for federal foster care and adoption assistance.

⁶ Pub. L. No. 104-193, § 108(d)(1)(B), 108(d)(3)(A), 108(d)(3)(B), 108(d)(5), 108(d)(6).

⁷ 42 U.S.C. §§ 672(a)(4), 673(a)(2)(A)-(B) (1996).

⁸ *Id.* §§ 672(a)(4), 673(a)(2) (1996).

⁹ Title IV-A of the Social Security Act, 42 U.S.C. §§ 401 *et seq.* (1996).

¹⁰ Pub. L. No. 104-193, tit. I, §§ 101-16.

2. Since Aid to Families with Dependent Children (AFDC) Will No Longer Be in Effect, State Child Protection Agencies May Face Increasing Administrative Difficulties Documenting Children's Eligibility for Federal Foster Care and Adoption Assistance

In the past, many child protection agencies relied on state agencies administering AFDC to help them document AFDC-related eligibility criteria for foster care and adoption assistance payments. The good news is that the new Medicaid eligibility requirements cross-reference to the former AFDC eligibility criteria.¹¹ Therefore, child protection agencies may be able to rely on Medicaid agencies to help them document that these criteria have been met. Unfortunately, Medicaid eligibility requirements cross-reference to a different date, July 16, 1996,¹² and some states may have changed AFDC eligibility criteria (such as family income requirements) between the two dates.

D. Automated Information Systems

Increased federal matching funds to create statewide automated child welfare information systems are available through federal fiscal year 1997.¹³ Automated information systems allow for better measurement and improvement of the effectiveness of child protection agencies.

E. National Study

Through fiscal year 2002 \$6 million per year has been set aside for a national random sample study of children who have been abused or neglected, as well as those at risk of abuse or neglect.¹⁴

II. Supplemental Security Income Will Affect Children's Eligibility for Adoption Assistance

The new law tightens children's eligibility criteria for Supplemental Security Income (SSI), an aid program administered by the Social Security Administration that makes cash payments to low-income elderly and disabled persons. Many seriously disabled children covered by this program will no longer be eligible for benefits.¹⁵ This will affect the number of children qualifying for federal adoption assistance benefits. To be eligible for adoption assistance benefits a child must be eligible for AFDC, federal foster care, or SSI.¹⁶ Some children in foster care who receive SSI may no longer be eligible for such aid.

III. Replacement of Aid to Families with Dependent Children by Temporary Assistance for Needy Families May Increase Burdens on Child Protection Agencies

The new TANF block grant replaces the AFDC entitlement program and repeals most federal requirements concerning financial assistance to needy families, that is, states are free to stop giving aid to certain children and parents now entitled to receive such benefits. At the same time, a number of new federal restrictions on payments to needy families bar states from making payments to needy families under specific circumstances.

A. Minor Parents Not Living with Parents, Adult Relatives, or Legal Guardians

TANF bars assistance to minor parents not living with parents, other adult relatives, or legal guardians.¹⁷ However,

¹¹ *Id.* § 114.

¹² *Id.*

¹³ *Id.* § 502.

¹⁴ *Id.* § 503 (creating a new 42 U.S.C. § 629A).

¹⁵ *Id.* § 211.

¹⁶ 42 U.S.C. § 673(a)(2) (1996).

¹⁷ Pub. L. No. 104-193, § 103 (enacting a new 42 U.S.C. § 608(a)(5)(A)).

when parents, adult relatives, or legal guardians are unavailable or present a danger to the child, the public welfare agency must help the minor parent locate an adult-supervised living arrangement.¹⁸ These provisions can affect child welfare practice in at least four ways.

1. Public Welfare Agencies May File More Abuse and Neglect Reports

When deciding if a minor parent should be excused from living with parents, adult relatives, or legal guardians, the public welfare agency may discover information that compels it to file an abuse or neglect report. Under former law, the public welfare agency had more freedom to provide aid to minor parents without pressing them to live with adults or evaluating the safety of their former homes. Under the new law, the public welfare agency needs to determine whether such placements are safe. Under the new law, a minor parent is excused from living with parents, adult relatives, or legal guardians if the child is at risk of serious physical or emotional harm, sexual abuse, or exploitation in the residence of the parent, relative, or guardian.¹⁹

2. Child Protection Agencies May Be Asked to Assess Potential Placements

When the public welfare agency is considering requiring the minor parent to live with a new relative or guardian, it may call upon the child protection agency to help it evaluate the potential placement. In this situation, when the minor parent claims that the placement would be unsafe, an evaluation is needed even if there is no reportable prior abuse or neglect. The public welfare agency may consider the child protection agency to be best able to conduct a home study.

3. Child Protection Agencies May Be Asked to Place More Children

Some child protection agencies may have more access to supervised living arrangements than many public welfare agencies. For this reason, additional children may be referred to the child protection agencies.

4. With Federal Matching Funds as an Incentive, Foster Care May Be Used More Than Necessary

If the minor parent and child are to be placed in an adult-supervised living arrangement, both minor parent and child may be moved into foster care. There may be a financial incentive to place them in foster care since federal matching funds may be available to pay

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for the foster care. However, the state's TANF block grant will not be increased if the public welfare agency pays for them to be placed in an adult-supervised living arrangement. States may consider drawing the federal matching funds, even if that requires unnecessary court and child protection agency involvement in the case.

Wide loopholes are notable in the requirements that minor parents not living with parents, adult relatives, or legal guardians live in supervised living arrangements. Public welfare agencies may allow a minor parent not living with a parent, adult relative, or legal guardian to live outside an adult-supervised living arrangement when they determine the current living arrangement to be "appropriate,"²⁰ or when it

¹⁸ *Id.* (enacting a new 42 U.S.C. § 608(a)(5)(B)(I)).

¹⁹ *Id.* (enacting a new 42 U.S.C. § 608(a)(5)(B)(ii)(III)).

²⁰ *Id.* (enacting a new 42 U.S.C. § 608(a)(5)(B)(I)).

is in the "best interest of the minor child" not to be provided with an adult-supervised living arrangement.²¹ Because of administrative convenience, financial reasons, or disagreement with the federal restrictions, many state and local agencies might continue to allow minor parents to live alone with their children and receive benefits.

B. Relatives Caring for Abused and Neglected Children

The new law does not alter the eligibility of relatives to be foster parents

TANF benefits due to their failure to find employment within the required two years, or if they have received TANF benefits for five years, public welfare agencies are not allowed to provide benefits to the household.²² This may put pressure on child protection agencies not to place the children with relatives or to bring cases to court and certify relatives as foster parents. This does not prevent the agency from making the relatives foster parents if they qualify. However, the relatives may no longer be financially in a position to become a custodian or guardian.

States concerned to avoid forcing children out of the households of poor relatives and into foster care may consider using the TANF "hardship exemption."²³ Such an exemption may apply to cases involving abused and neglected children living with relatives. Similarly, child protection practitioners may urge public welfare agencies to waive such restrictions in domestic violence cases, including cases involving child abuse and neglect.²⁴

C. Minors Absent from the Home

TANF bars payments to parents for minors absent from the home for more than 45 days.²⁵ This can create problems when children are temporarily placed in foster care to give parents time to improve so the child can be returned. If aid is cut off, parents may lose their residence, thereby delaying further the child's return home. States can address this problem in two ways: (1) they may lengthen the time limit to up to 180 days;²⁶ and (2) they can create a hardship exemption for cases involving children in foster care whose parents are working on a short-term reunification plan.²⁷

Wide loopholes are notable in the requirements that minor parents not living with parents, adult relatives, or legal guardians live in supervised living arrangements.

but does affect their eligibility to receive public assistance in two ways:

- 1. Because TANF Is a Block Grant and Not an Entitlement, States Are No Longer Required to Provide Benefits to Relatives Caring for Poor Children**

If states drop benefits to relatives caring for poor children, they will put added pressure on child protection agencies to certify relatives as foster parents or to place children with unrelated foster parents.

- 2. Because of the New Restrictions on Payments to Needy Families, Placing Certain Children with Relatives Is No Longer Practical for Child Protection Agencies to Do**

For example, if relatives living in a poor household become ineligible for

²¹ *Id.* (enacting a new 42 U.S.C. § 608(a)(5)(B)(ii)(IV)).

²² *Id.* (enacting a new 42 U.S.C. § 608(a)(7)).

²³ *Id.* (enacting a new 42 U.S.C. § 608(a)(7)(C)).

²⁴ *Id.* (enacting a new 42 U.S.C. § 602(a)(7)).

²⁵ *Id.* (enacting a new 42 U.S.C. § 608(a)(10)).

²⁶ *Id.* (enacting a new 42 U.S.C. § 608(a)(10)(A)).

²⁷ *Id.* (enacting a new 42 U.S.C. § 608(a)(10)(B)).

D. Emergency Assistance

TANF no longer requires states to make emergency assistance payments. Also, because funds are paid in the form of a block grant, there are no more federal matching funds to give states the incentive to use emergency assistance for services to preserve families. Child protection agencies and advocates may have a harder time persuading public welfare agencies to continue to fund these services under the block grant.

E. Persons Convicted of Drug-Related Felonies

Persons convicted of drug-related felonies are barred for life from receiving TANF and food stamp benefits.²⁸ States may opt out of this requirement or provide time-limited ineligibility, but only by enacting legislation.

Since many children entering foster care have parents with substance abuse problems, this provision will disproportionately affect the families of children in foster care. It may force family separation when parents who are not imprisoned lose their public benefits. Family reunification may become more difficult once parents are released from prison.

IV. Restrictions on Immigrants' Benefits May Affect the Eligibility of Certain Alien Children for Federal Foster Care and Adoption Assistance

The new law makes many aliens (noncitizens) ineligible for many public benefits. Most legal immigrants are barred from receiving SSI and food stamps.

Nonqualified aliens (e.g., illegal immigrants or children on tourist visas) are now ineligible for any state and local public benefits including "retirement, welfare, health, disability, public assisted housing, postsecondary educa-

tion, food assistance, unemployment benefits, or *any other similar benefit* for which payments or assistance are provided to an individual household, or family eligibility unit by an agency of the of the United States . . ." (emphasis added).²⁹ If foster care is not considered "any similar benefit," this provision does not bar the payment of foster care benefits for children who are illegal aliens. While "nonqualified" immigrant children apparently will continue to be eligible for state and local foster care and adoption assistance benefits, this is not completely clear.

For qualified aliens, federal and state foster care and adoption assistance benefits clearly can be provided. While many qualified aliens are ineligible for federal means-tested benefits (benefits based on the recipient's income) for five years after entry into the United States, a specific exception for children receiving foster care and adoption assistance benefits is found in Titles IV-B and IV-E of the Social Security Act.³⁰

After the five-year waiting period, if qualified aliens are sponsored, they will have difficulty receiving public benefits, that is, the sponsors' incomes will be counted as part of the aliens' incomes, thus making them ineligible for federal means-tested programs. Again, there is a specific exception for children receiving foster care and adoption assistance.³¹

New administrative burdens may interfere with getting foster care and adoption assistance benefits for many qualified alien children. As explained above, eligibility for federal foster care and adoption assistance benefits depends, in part, upon AFDC or SSI eligibility. Since many qualified aliens will no longer be claiming such benefits, child protection agencies may have to use their own staff to reconstruct such eligibility after an alien child enters foster care.

²⁸ *Id.* § 115.

²⁹ *Id.* § 411 (a), (c)(1)(B).

³⁰ *Id.* § 403(a), (c)(2)(F). Note that the foster and adoptive parents themselves must be citizens or qualified aliens.

³¹ *Id.* § 423, adding a new § 213A to the Immigration Act. The relevant exception appears in § 213A(d)(6).

V. Funds for Social Service Block Grants—Often Used in Child Protection Cases—Will Be Reduced

The new law reduces funds for the social services block grant (Title XX of the Social Security Act) by 15 percent. Many states use Title XX funds to pay for services designed to rehabilitate families of abused and neglected children. On the other hand, states may transfer funds not used for aid to needy families to the social services block grant.³²

VI. The New Welfare Law May Indirectly Increase Child Protection Workloads

The most important effects of the new law on child protection may well be its indirect effects. As families lose public benefits, they may approach child protection agencies to ask for help and services. Child protection caseloads may increase when families, under additional financial stress, commit more child abuse and neglect or voluntarily place their children in foster care.

³² *Id.* § 103, enacting a new 42 U.S.C. § 604(d).