



FOSTERING CONNECTIONS CREATES A CONFLICT IN FEDERAL LAW REGARDING THE PREFERRED PERMANENCY MODEL

To be effective, any legislation must have consistent policies and incentives. Before the Fostering Connections to Success and Increasing Adoptions Act, for children who could not return home, federal law consistently preferred adoption. The federal government subsidized financial support the state provided to adoptive parents and also provided payments directly to the state for increasing adoptions over a baseline level. The federal government did not provide any support or incentive for other permanency options such as legal guardianship.

With Fostering Connections, however, federal policies and incentives regarding permanency are no longer consistent. On the one hand, the new law still encourages adoption over legal guardianship. Federal law requires states to in essence rule out adoption before considering legal guardianship, and incentive payments to states remain solely based on increases in adoptions. On the other hand, as a practical matter, the new law puts both adoption and legal guardianship on an equal footing. It now subsidizes financial support for relatives who either adopt or who take legal guardianship. This policy conflict has practical consequences for states and more importantly for children.

The federal government rewards states only when a relative chooses adoption. But states opting into the federal kinship guardianship assistance program effectively lose the ability to affect that choice. States must inform relatives of the kinship guardianship assistance program in the initial notice after the child has been removed.ⁱ All relatives are told upfront that there is a choice between adoption and guardianship. But states have no “carrot” to encourage relatives to pick adoption over guardianship because relatives will get paid no matter what choice they make.ⁱⁱ States have no “stick” either. While Fostering Connections does require that the state find adoption not appropriate before a relative becomes eligible for a kinship guardianship payment,ⁱⁱⁱ if a relative decides against adoption in favor of legal guardianship, the state’s only recourse is to remove the child from the relative’s otherwise appropriate home—hardly something child welfare professionals would do or that would be in the child’s best interest. As a result, as a practical matter, whether relatives adopt or become guardians is solely a matter of relative preference.

Research shows that providing relatives with legal guardianship as a financially viable alternative can increase overall exits to permanency.^{iv} Relatives who are opposed to adoption now can become a child’s legal guardian, taking the child out of foster care. But research also shows that with subsidized legal guardianship, adoptions will decline. At least some and perhaps many relatives who would have exited to adoption because it was the only financially viable alternative will now choose to exit through legal guardianship instead.^v

Fewer adoptions mean reduced adoption incentive payments for states.^{vi} As a result, the sixteen states such as Texas, New York and Ohio^{vii} who do not currently provide financial support to relative legal guardians face a conundrum. Opting into the federal kinship guardianship assistance program may increase the number children exiting foster care into a permanent home with a relative. But in doing so, states may be sacrificing federal adoption incentive funds, leaving less money overall for states to invest in improving their child welfare system.

In practice, Fostering Connections seems to evidence an intent to promote a policy of permanency for relatives, regardless of its legal form. If so, the federal government should change its incentive payment structure to reflect this policy choice and reward states for an increase in permanency not just adoption.

Respectfully submitted,

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ⁱ 42 U.S.C. §671(a).

ⁱⁱ Although the law allows states to set a lower rate for legal guardians, in practice, it does not work. Maryland and North Carolina each had a guardianship assistance demonstration project that set a lower rate for legal guardians. Experience in both states was that doing so made it difficult, if not impossible, to attract anyone into the program because of the attendant financial loss. *Synthesis of Findings from State Assisted Guardianship Title IV-E Demonstration Projects* (September 2005). Administration of Children and Families. (Available at: http://www.acf.hhs.gov/programs/cb/programs_fund/cwwaiver/agissue/evaluation.htm#process. Accessed on September 28, 2009).

ⁱⁱⁱ 42 U.S.C. §673(d)(3)(A)(ii).

^{iv} Testa MF. *Subsidized Guardianship: Testing the Effectiveness of an Idea Whose Time Has Finally Come*. Children and Family Research Center. May 2008.

^v Testa MF. *Subsidized Guardianship: Testing the Effectiveness of an Idea Whose Time Has Finally Come*. Children and Family Research Center. May 2008. In Illinois, an evaluation of the legal guardianship payment demonstration project found that two-thirds of completed guardianships might have been adoptions in the absence of the legal guardianship payment option. A similar substitution effect was found in Tennessee. There was no substitution effect found in a similar program adopted in Milwaukee, Wisconsin. But researchers attributed the lack of an effect to Milwaukee's decision not to offer the guardianship program to families who were already on the track to adoption, a strategy that is not available under Fostering Connections.

^{vi} A relative legal guardian can later decide to adopt. But there is no incentive to do so and there is no evidence of this happening in the assisted guardianship demonstration projects in other states.

^{vii} Allen T, DeVooght K, Geen R. *State Kinship Care Policies for Children that Come to the Attention of Child Welfare Agencies; Finding from the 2007 Casey Kinship Foster Care Policy Survey*. Child Trends. December 2008.