

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Alex Lee, Chair
AB 2255 (Joe Patterson) – As Amended March 21, 2024

SUBJECT: Adoption Assistance Program: eligibility

SUMMARY: Expands eligibility for Adoption Assistance Program (AAP) benefits and requires counties to include an application for extension of benefits when notifying adoptive parents of the expiration of benefits due to age. Specifically, **this bill:**

- 1) Expands eligibility for the AAP from up to 21 years of age to include youth up to 26 years of age.
- 2) Removes the current requirement limiting AAP eligibility for specified nonminor dependents (NMDs) to only those who attained 16 years of age before the adoption assistance agreement became effective.
- 3) Requires counties, when notifying adoptive parents of a child under 21 years of age of the expiration of benefits due to age, to include an application for extension of benefits.

EXISTING LAW:

- 1) Establishes eligibility for AAP benefits and specifies that a child is eligible for AAP benefits if all of the conditions specified in a) to i) are met or if the conditions specified in 2) are met.
 - a) It has been determined that the child cannot or should not be returned to the home of the child's parents as evidenced by a petition for termination of parental rights, a court order terminating parental rights, a signed relinquishment, or, in the case of a tribal customary adoption, if the court has given full faith and credit to a tribal customary adoption order, or, in the case of a NMD the court has dismissed dependency;
 - b) The child has at least one of the following characteristics that are barriers to the child's adoption:
 - Adoptive placement without financial assistance is unlikely because of membership in a sibling group that should remain intact or by virtue of race, ethnicity, color, language, three years of age or older, or parental background of a medical or behavioral nature that can be determined to adversely affect the development of the child; or
 - Adoptive placement without financial assistance is unlikely because the child has a mental, physical, emotional, or medical disability that has been certified by a licensed professional.
 - c) The need for an adoption subsidy is evidenced by an unsuccessful search for an adoptive home to take the child without financial assistance, as documented in the case file of the prospective adoptive child;

- d) The child satisfies any of the following criteria: the child is under 18 years of age; the child is under 21 years of age and has a mental or physical handicap that warrants the continuation of assistance; the child is under 21 years of age and an NMD, who was 16 years of age before the adoption assistance agreement became effective, and one or more of the specified conditions related to attending school or working applies;
 - e) The adoptive family is responsible for the child pursuant to the terms of an adoptive placement agreement or a final decree of adoption and has signed an adoption assistance agreement;
 - f) The adoptive family is legally responsible for the support of the child and the child is receiving support from the adoptive parent;
 - g) The California Department of Social Services (CDSS) or the county responsible for determining the child's AAP eligibility status and for providing financial aid, and the prospective adoptive parent, prior to or at the time the adoption decree is issued by the court, have signed an adoption assistance agreement that stipulates the need for, and the amount of, AAP benefits;
 - h) The prospective adoptive parent or any adult living in the prospective adoptive home has completed the required criminal background check requirements; and,
 - i) The child is a citizen of the United States or a qualified immigrant. (Welfare and Institutions Code [WIC] § 16120)
- 2) Specifies that a youth is eligible for AAP benefits if they received AAP benefits with respect to a prior adoption and is again available for adoption because the prior adoption was dissolved and the parental rights of the adoptive parents were terminated or because the youth's adoptive parents died and the youth meets the special needs criteria, as described. Specifies that when a nonminor is receiving AAP benefits after 18 years of age and the nonminor's adoptive parents die, the juvenile court may resume dependency jurisdiction over the nonminor. (WIC § 16120(m))
- 3) Requires, for initial adoption assistance agreements, the adoptive family to be paid an amount of aid based on the child's needs otherwise covered in Aid to Families with Dependent Children-Foster Care (AFDC-FC) payments and the circumstances of the adopting parents, but that shall not exceed the basic foster care maintenance payment rate structure in effect on December 31, 2007, that would have been paid based on the age-related state-approved foster family home rate, and any applicable specialized care increment, for a child placed in a licensed or approved family home. (WIC § 16121(a))

Federal law:

- 4) Establishes the "Adoption Assistance and Child Welfare Act of 1980" which mandates states to provide adoption assistance payments to parents who adopt children meeting specific criteria, and created federal incentives to encourage the adoption of special needs children. (Public Law 96-272)

FISCAL EFFECT: Unknown, this bill has not been analyzed by a fiscal committee.

COMMENTS:

Background: *The Adoption Assistance Program.* The AAP provides financial and medical coverage to facilitate the adoption of children who otherwise would remain in long-term foster care. AAP is available to both relative and non-relative families who adopt children from foster care and is designed to reduce financial barriers to the adoption of children who might otherwise remain in foster care. The AAP rate is negotiated with each family and is based on the child's basic and special needs and the circumstances of the family. The amount that is decided upon goes directly to the parents and not the youth.

This bill would allow AAP benefits to continue for adopted youth up until they reach 26 years of age, regardless of the age of their adoption.

AAP is a realigned program: the 2011-12 Budget realigned \$1.6 billion in state funding for the child welfare services, foster care, and adoption programs, to the counties. For the first year of the 2011 realignment, no changes were made to state law governing child welfare services and adoption programs. During the 2012-13 budget process, however, the Administration proposed programmatic trailer bill language related to specific major themes, all of which were addressed by SB 1013, (Committee on Budget and Fiscal Review), Chapter 35, Statutes of 2012, which also requires counties to report to CDSS on the expenditure of savings realized as a result of maximizing available federal adoption assistance funding.

In 2021, CDSS issued All County Letter (ACL) No. 21-54 to inform counties, and other interested parties of new rates implementation and to provide instructions on how to apply the AAP Level of Care (LOC) Protocol to determine the maximum eligible AAP LOC rate for an AAP-eligible child. The protocol was designed to support a consistent, statewide rate determination process. The ACL noted that the negotiated AAP rate continues to be based on the child's care and supervision needs and the circumstances of the family. The AAP LOC Protocol is a strength-based rate-setting methodology to identify the AAP-eligible child's individual care and supervision needs. An additional factor is the role of the prospective and adoptive parent(s) and how they will meet their adopted child's care and supervision needs. The protocol consists of three components: an instruction guide; the rate determination questionnaire; and, an automated digital scoring tool. The ACL detailed the rate structure to be used for initial AAP agreements signed on or after April 1, 2021.

This bill requires counties to include an application for an extension of benefits when notifying adoptive parents of a child under 21 years of age of the expiration of benefits due to age.

The Adoption Assistance and Child Welfare Act of 1980 was enacted on June 17, 1980. The major provisions of the Act are below:

- Requires states to make adoption assistance payments, which take into account the circumstances of the adopting parents and the child, to parents who adopt a child who is eligible for Aid to Families with Dependent Children (AFDC) and is a child with special needs;
- Defines a child with special needs as a child who meets the following conditions:
 - Cannot be returned to the parent's home;

- Has a special condition such that the child cannot be placed without providing assistance; and,
- Has not been able to be placed without assistance.
- Requires, as a condition of receiving federal foster care matching funds, that states make 'reasonable efforts' to prevent removal of the child from the home and return those who have been removed as soon as possible;
- Requires participating states to establish reunification and preventive programs for all children in foster care;
- Requires the state to place a child in the least restrictive setting and, if the child will benefit, one that is close to their parent's home;
- Requires the court or agency to review the status of a child in any nonpermanent setting every six months to determine what is in the best interest of the child, with most emphasis placed on returning the child home as soon as possible; and,
- Requires the court or administrative body to determine the child's future status, whether it is a return to parents, adoption, or continued foster care, within 18 months after initial placement into foster care.

Adoption Assistance Agreement. [An adoption assistance agreement](#) describes the adoption assistance benefit that parents will receive for their adopted child. Among the affirmations this form requires, parents are specifically asked to note their understanding that that the child will not be eligible to receive an AAP benefit after reaching 18 years of age unless they have a mental or physical disability which warrants continuation to 21 years of age. Prior to the child's 18th birthday, parents are required to inform the responsible public agency and request they evaluate their child's needs for continuation of benefits beyond 18 years of age.

Parents are further required to acknowledge they understand that the child will not be eligible to receive an AAP benefit after they reach 18 years of age unless the initial agreement was signed when the child was at least 16 years of age; and one of the following five participation criteria is met:

- 1) Completing a high school or an equivalency program;
- 2) Enrolled in a post-secondary or vocational school;
- 3) Participating in a program or activity that promotes or removes barriers to employment;
- 4) Is employed at least 80 hours per month; or,
- 5) Is incapable of participating in 1 through 4 above, due to a mental or physical disability.

Parents are further required to acknowledge that they are responsible for requesting the benefit extension prior to the child's 18th birthday, and providing documentation to the responsible public agency supporting that the child meets one of the five participation criteria.

Author’s Statement: According to the Author, “With over 60,000 children in California’s foster care system, the permanent placement of these kids into healthy home environments with systems of support has never been more important. While the state’s Adoption Assistance Program has played a dynamic role in this effort, certain stipulations within the eligibility requirements for funding have placed strains on foster youth accessing critical services post-adoption. Currently, only foster youth adopted after the age of 16 are able to receive benefits and support in their formative transition years (ages 18-21) and in many cases are being denied. By removing the minimum adoption age requirement for Adoption Assistance Program funding and increasing the eligibility age to up to 26 years old, adoptees can maintain access to critical support services as they transition into adulthood.”

Equity Implications: The provisions of this bill would increase the state’s capacity to serve underserved and marginalized communities by allowing for AAP funding for a larger subset of former foster children that lasts for a longer period of time.

Existing law restricts AAP funding extensions past 18 years old only to those recipients who were adopted after the age of 16 years old and this bill proposes to allow AAP funding to be available to children from 0-26 years old, no matter their age when adopted.

Policy Considerations: *Benefits Extended to 26 Years of Age.* Over the last few legislative sessions, there have been numerous attempts: AB 867 (Friedman) of 2023, SB 9 (Cortese) of 2023, AB 2306 (Cooley) of 2022, AB 2189 (Friedman) of 2022, SB 912 (Beall) of 2021, to expand foster care benefits up past 21 years of age. These efforts were ultimately not enacted due to cost concerns, among other things. This bill is attempting to extend benefits to those foster youth who were adopted. The AAP exists to incentivize adoption and permanency. This bill would extend benefits up to 26 years of age in a similar fashion that has been considered for foster youth that have not been adopted. The key difference between extended foster care and AAP benefits is that extended foster care benefits typically go directly to the youth (or the facility providing care), and as noted above, AAP benefits are provided to the parent(s).

In recent public hearings, there were reports about adoptions failing as the youth reach adulthood. Collectively, it is agreed upon that foster youth need more support as they become young adults. This begs the question(s): how long should benefits be provided for former, current, and adopted foster youth? Should it be uniform? Should benefits just be extended beyond 21 for adopted foster youth with disabilities? Are existing public assistance benefits sufficient in providing for adopted foster youth with high needs?

These remain discussions that child welfare advocates, the Legislature, and the Administration continue to deliberate.

Double referral: Should this bill pass out of this committee it will be referred to the Assembly Committee on Judiciary.

RELATED AND PRIOR LEGISLATION:

AB 2948 (Ramos), of the current legislative session, allows former dependent Indian children adopted through Tribal courts of federally recognized Tribes without a Title IV-E agreement, to be eligible for AAP. *AB 2948 is pending before this committee and set for a hearing on April 9, 2023.*

SB 824 (Ashby) of 2023, would have expanded eligibility for AAP to include the prospective adoptive parent or any adult living in the prospective adoptive home who had completed the criminal background check requirements for resource family approval (RFA), or if the child was subject to an order for placement with a relative, or extended family member, regardless of the status of any criminal record exemption or RFA or tribally approved home approval. *SB 824 was held on the Assembly Appropriations Committee suspense file.*

SB 1013 (Committee on Budget and Fiscal Review), Chapter 35, Statutes of 2012, see comments above.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

County Welfare Directors Association of California

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