

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

SB 407 (Wiener) – As Amended April 27, 2023

SENATE VOTE: 31-5

SUBJECT: Foster care: resource families

SUMMARY: Expands the California Department of Social Services' (CDSS) and counties' responsibilities related to implementing a resource family approval (RFA) process to require resource families to demonstrate the capacity to meet the needs of a child, regardless of the child's sexual orientation or gender identity, as specified. Specifically, **this bill**:

- 1) Adds to the list of standards a resource family must demonstrate to include the capacity to meet the needs of a child regardless of the child's sexual orientation or gender identity, including an understanding that sexual orientation, gender identity, and expression can evolve over time, and that, should difficulties around these issues arise, that they agree to seek out any and all available resources offered by the county, foster family agency, and other offered resources to meet those needs.
- 2) Adds to the list of CDSS' responsibilities related to the resource family home environment assessment standards to include that an applicant is required to demonstrate an understanding of the rights of children in care and the applicant's responsibility to safeguard those rights by signing a document acknowledging the foster youth rights enumerated in existing law.
- 3) Adds to the list of CDSS' responsibilities related to adopting and requiring the use of standardized documentation for the home environment and permanency assessments of resource families to include documents for assessing the ability to care for and supervise children and youth of all sexual orientations and gender identities.
- 4) Requires the CDSS review of county-approved resource families in each county to ensure that approval standards are being properly applied, to also ensure that county-approved resource families are upholding the rights of a child in foster care and meeting the resource family's responsibility to safeguard those rights, including the right to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.
- 5) Requires the CDSS to work with stakeholders, including counties, the California Alliance of Child and Family Services, and LGBTQ advocates, to develop standards and a caregiver handbook for caring for children and youth of all sexual orientations and gender identities.
- 6) Requires counties to ensure that resource family applicants and resource families have completed caregiver training to have the necessary knowledge, skills, and abilities to support children of all races, ethnic group identifications, ancestries, national origins, colors, religions, sexes, sexual orientations, gender identities, mental or physical disabilities, or HIV statuses in foster care.

- 7) Requires counties to add to the topics that must be included in the training that resource families that care for children who are 10 years of age or older are required to take, within 12 months of approval as a resource family, to include the experiences of lesbian, gay, bisexual, transgender, questioning, or another diverse identity (LGBTQ+) and gender-expansive youth who are exploited or trafficked.
- 8) Makes Legislative findings and declarations related to the disproportionate number of youth who identify as LGBTQ+ in foster care and in need of a nurturing LGBTQ+ affirming resource family in out-of-home care.

EXISTING LAW:

- 1) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk of abuse and neglect or to have been abused or neglected, as specified. (Welfare and Institutions Code Section [WIC] 202)
- 2) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, neglected or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (WIC 300.2)
- 3) Declares legislative intent to, whenever possible, preserve and strengthen a child's family ties and, when a child must be removed from the physical custody of their parents, to give preferential consideration to placement with relatives. States legislative intent to reaffirm its commitment to children who are in out-of-home placement to live in the least restrictive family setting and as close to the child's family as possible, as specified. Further states legislative intent that all children live with a committed, permanent, nurturing family and states that services and supports should be tailored to meet the specific needs of the individual child and family being served, as specified. (WIC 16000)
- 4) Requires out-of-home placement of a child in foster care to be based upon the selection of a safe setting that is the least restrictive family setting that promotes normal childhood experiences and the most appropriate setting that meets the child's individual needs and is available, in proximity to the parent's home, in proximity to the child's school, consistent with the selection of the environment best suited to meet the child's special needs and best interests. (WIC 16501.1(d)(1))
- 5) Provides that children in foster care live in a variety of out-of-home care settings: licensed foster family homes, approved relative and nonrelative extended family member (NREFM) homes, foster family agencies, and group homes. All of these placement types, considered facilities under current law, are required to meet the respective health and safety standards in order to be licensed or approved. (WIC 16519)
- 6) Defines a "resource family" to mean an individual or family that has successfully met both the home environment assessment and the permanency assessment criteria, as specified, necessary for providing care for a child placed by a public or private child placement agency by court order, or voluntarily placed by a parent or legal guardian. (Health and Safety Code [HSC] 1517; WIC 16519.5(c)(1))

- 7) Requires CDSS to implement the RFA process as a unified, family friendly, and child-centered process to replace the existing multiple processes for licensing foster family homes, certifying foster homes by licensed foster family agencies, approving relatives, and NREFM as foster care providers, and approving guardians and adoptive families. (WIC 16519.5(a))
- 8) Stipulates that a resource family shall be considered eligible to provide foster care for children in out-of-home placement and shall be considered approved for adoption and guardianship, and authorizes a county to approve a resource family to care for a specific child, as specified. (WIC 16519.5(c)(4))
- 9) Provides that approval of a resource family does not guarantee an initial, continued, or adoptive placement of a child with a resource family or with a relative or non-relative extended family member. Further, approval of a resource family does not guarantee the establishment of a legal guardianship of a child with a resource family. (WIC 16519.5(c)(6))
- 10) Establishes requirements for foster family agencies (FFAs) that approve resource families, including, among other things, requiring an FFA to be responsible for approving or denying resource family applications, and preparing a written evaluation of an applicant's capacity to foster, adopt, or provide legal guardianship, as specified. (HSC 1517(b))
- 11) Provides that it is the policy of this state that all persons engaged in providing care and services to foster children, including, but not limited to, foster parents, adoptive parents, relative caregivers, and other caregivers contracting with a county welfare department, shall have fair and equal access to all available programs, services, benefits, and licensing processes, and shall not be subjected to discrimination or harassment on the basis of their clients' or their own actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. Further, clarifies that these provisions shall not be interpreted to create or modify existing preferences for foster parents or to limit the local placement agency's ability to make placement decisions for a child based on the child's best interest. (WIC 16013)
- 12) States legislative intent recognizing the importance of ensuring that prospective foster family homes meet specified health and safety requirements and acknowledging that there is a further need to evaluate a licensed foster parent's ability, readiness, and willingness to meet the varying needs of children in order to ensure competent placement resources. (WIC 521.6(a))
- 13) Specifies when placing foster children, the placing agency shall not decline to place a child with a resource family because of a resource family parent's actual or perceived sexual orientation, gender identity, or gender expression. (WIC 16518.5)

FISCAL EFFECT: According to the Senate Appropriations Committee analysis on May 8, 2023:

- CDSS estimates unknown, potential one-time General Fund costs to hire a facilitator to convene a workgroup to develop the handbook.
- To the extent the bill increases county costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment, the bill would apply to local agencies only to the extent that the state provides annual funding for the cost increases.

COMMENTS:

Background: *Child Welfare Services (CWS).* The CWS system aims to provide for the safety, permanency, and well-being of children and their families. Each of California's 58 counties administers its own child welfare program. County governments are directly involved with children and families to address child abuse and neglect, keep families together, and place a child who is at risk in either a temporary or permanent out-of-home placement. When suspicions of abuse or neglect arise, often as a result of a report to law enforcement or a county child welfare agency by a mandated reporter, like a healthcare provider or teacher, Child Protective Services is tasked with investigating the report. If the allegation of abuse or neglect is substantiated, a social worker then determines whether it is in the best interest of the child to remain in their parent's custody or be placed within the CWS system. If the court orders a child to be removed from the home, the county's juvenile dependency court holds legal jurisdiction, and the CWS system appoints a social worker to ensure that the needs of the youth are met. It is the state's goal to reunify a foster child or youth with their biological family whenever possible. In instances where reunification is not possible, it is the state's goal to provide a permanent placement alternative, such as adoption or guardianship, with other relatives or NREFMs, or with resource families. As of January 1, 2023, there are 52,265 youth between birth and up to 21 years of age old in foster care.

Resource Family Approval (RFA) Program. A resource family, previously referred to as foster parents, approved relatives or approved NREFMs, plays a critical role in the CWS system by providing placements for foster youth in a family-based setting. A resource family is a caregiver who may be related, have a familiar or mentoring relationship, or no previous relationship with the child and provides out-of-home care for children in foster care. When out-of-home placement is needed to keep the child safe, CWS and probation departments make efforts to identify, consider and evaluate relatives, family friends and those closely tied to the family as the primary placement option. When relatives cannot be a placement option for the child, the placing agency makes efforts to actively recruit and support resource families that are able to keep the child or youth connected to their community and culture. These approved individuals, couples or families then provide care on a temporary (foster care) and/or permanent (adoption and legal guardianship) basis, with the ultimate goal of successfully reuniting the child with their parents. Aligned with the purpose of CWS, a resource family seeks to provide a child with a feeling of safety, permanence, and well-being through placement in a committed and nurturing family home rather than a congregate or institutional care facility. Research shows that children in out-of-home care placed with relatives and NREFMs are more stable, more likely to be placed with siblings, and more likely to stay connected to their community and extended family.

The RFA Program was implemented in January 2017 as a family friendly and child-centered caregiver approval process. The RFA Program has a single approval standard that replaced previous processes for licensing foster family homes, approving relatives and NREFMs as foster care providers, and approving families for legal guardianship or adoption. Tribally approved homes are not required to adhere to the RFA standards. CDSS has issued Written Directives and forms for implementing the RFA Program to ensure consistent standards among all counties and approving agencies. Components of the RFA process include a Home Environment Assessment and Permanency Assessment, as well as filling out and signing documentation, including the Written Report of the Comprehensive Assessment for purposes of determining the applicant's suitability as a resource family. The Home Environment Assessment comprises a background check and an assessment of the home and grounds, which include the type of residence, such as a

single-family home, apartment, or duplex, number of bedrooms and bathrooms, and other relevant information, such as the presence of weapons, animals, pools, or other bodies of water; outdoor activity space, and storage areas of the applicant's home. The Permanency Assessment includes verification that each applicant completed caregiver training, a family evaluation of each applicant (i.e. psychosocial assessment), and any other activities related to an applicant's ability to achieve permanency with a child.

If a county approves an application, then the county is required to complete a RFA Certificate, and the resource family may choose to provide short or long-term care. However, approval of a resource family does not guarantee placement of a child with that resource family. The child's social worker will continue to make placement decisions based on what is in the best interest of the child.

Cultural Competency and Sensitivity. Within the training that resource families receive, topics covered include:

- The personal rights of children and nonminor dependents (NMDs) in foster care, including the resource family's responsibility to safeguard those rights, including the right to have fair and equal access to all available services, placement, care, treatment and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status;
- The cultural needs of children, including instruction on cultural competency and sensitivity, and related best practices for providing adequate care for children or youth across diverse ethnic and racial background, as well as children or youth identifying as LGBT;
- Child and adolescent development, including sexual orientation, gender identity, and expression; and,
- Information on providing care to children who have been commercially sexually exploited or who have been victims of child labor trafficking.

Additionally, during the family evaluation of an applicant, which requires one-on-one interviews to assess family structures, values, discipline practices, and coping strategies, a social worker will gather information to learn more about the family system and evaluate their strengths and areas where more support may be needed for safer and more effective parenting. Information gathered includes, but is not limited to:

- Knowledge or ability to demonstrate an understanding of: a) the safety, permanence, protection and well-being of youth who have been victims of child abuse and neglect; b) the needs and development of youth; c) effective parenting skills or knowledge about parenting; d) a resource family's role and capacity to work cooperatively with the county, birth parents, extended family, Tribe, and other service providers in implementing the youth's case plan; and e) the rights of youth in care and a resource family's responsibility to safeguard those rights;
- An ability and willingness to: a) meet the needs of youths; b) make use of support resources offered by a county or by a support structure in place, or both; c) prepare a child for adulthood or prepare a NMD for the transition to independent living; d) honor the natural

connections of a youth; in the case of an Indian child, the ability to help maintain the child's connection with the Tribe, such as by visitation and participation in cultural events and ceremonies; and e) support permanency plans for a child or NMD, including reunification, and help prepare a youth for permanence or provide permanency.

LGBTQ+ Foster Youth in California. According to research conducted in 2020, LGBTQ+ youth are overrepresented in foster care, with 30% of foster youth identifying as lesbian, gay, bisexual, or questioning, and 5% as transgender, compared to 11% and 1% of California's youth not in foster care. Furthermore, LGBTQ+ youth of color are disproportionately overrepresented and stay longer in the CWS system, while also having an increased risk of experiencing discrimination and violence compared to their peers. LGBTQ+ youth enter the CWS system for similar reasons as other foster youth; however, family rejection, neglect or abuse as a result of their sexual orientation, gender identity or gender expression is a common pathway for LGBTQ+ youth to land in foster care.

Once a LGBTQ+ youth has been casted out of their biological family due to their identity as LGBTQ+ and are placed in the CWS system, a high percentage of these youth continue to experience maltreatment after they are placed in out-of-home care due to the same factor. In a Los Angeles study, 13% of LGBTQ+ youth reported being treated poorly by the foster care system, compared with 6% of non-LGBTQ+ youth. LGBTQ+ youth already endure the trauma associated with leaving their families of origin, coupled with multiple disrupted placements leads to an increased chance of homelessness. It is estimated that youth who are homeless and LGBTQ+ is as high as 40%. One study found that 65% of LGBT youth experiencing homelessness had lived in group or foster homes and that 39% of these youth had been forced to leave their homes because of their LGBTQ identity. Moreover, LGBT youth in foster care are less likely to find a permanent home, whether that be through reunification with their birth family or extended relatives, or through adoption and guardianship. This bill seeks to ensure LGBTQ+ youth will be placed in affirming resource families that will support them and demonstrate an understanding of the unique needs of LGBTQ+ youth and gender-expansive youth, as well as the capacity and willingness to meet those needs.

While LGBTQ+ resource families represent a pool of highly motivated and qualified prospective foster parents and expand the options for permanency for youth, in many parts of the United States, LGBTQ+ families remain largely untapped for adoption or foster care services. Last year, Governor Newsom signed AB 2466 (Cervantes), Chapter 967, Statutes of 2022, into law that provided additional protections to resource families by prohibiting a placing agency from declining to place a child with a resource family because of a resource family parent's actual or perceived sexual orientation, gender identity, or gender expression.

Author's Statement: According to the author, "[This bill] ensures that LGBTQ foster youth receive essential support by specifically requiring LGBTQ acceptance to be considered in the resource family approval (RFA) process, creating standard documentation for the assessment of LGBTQ youth needs, and ensuring more frequent follow-up. These youth are at greater risk for homelessness, criminal justice involvement, and mental health challenges, and we must do everything in our power to ensure they have a safe home in the state of California"

Need for this bill: The provisions of the bill seek to require resource families to demonstrate an understanding of the unique needs of LGBTQ+ and gender-expansive youth, and the capacity and willingness to meet those needs. This bill further requires the CDSS to ensure that county-

approved resource families are upholding the rights of a child in foster care and meeting the resource family's responsibility to safeguard those rights, including the right to have fair and equal access to all available services, placement care, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

While the training that resource families receive discuss topics of sexual orientation, gender identity, and gender expression, trainings only take place at one point in time, which at times, may occur early on in a child's life. As time goes on in the child's development, and the foster youth actualizes and expresses their gender identity and and/or sexual orientation, resource families may come to the conclusion that they are not well equipped to support the needs of LGBTQ+ youth and wish to terminate care for the child in their custody, or at worst, become hostile toward them – even when resource families have received training. By requiring a resource family to demonstrate the capacity to meet the needs of a child, regardless of the child's sexual orientation or gender identity, and that should any difficulties around this issue arise, that they agree to seek out any and all available resources offered by the county or foster family agency to meet those needs, youth will be better served by the homes in which they are placed.

Equity Implications: LGBTQ+ youth are overrepresented in the CWS system, face poorer treatment in foster care, and have lower rates of achieving permanency due to their LGBTQ+ identity. More than 60% of LGBTQ+ youth said their home was not affirming. The provisions of this bill seek to amend statutes related to resource families by adding language that ensures all LGBTQ+ foster youth are placed in homes that are accepting and supportive of them.

The affirmation of a child's LGBTQ+ identity is strongly correlated to the health, safety, and wellbeing of a child. According to a 2022 survey from the Trevor Project, nearly one in five transgender or nonbinary youth in California have attempted suicide, and over half of them have seriously considered suicide. However, the odds that a transgender or nonbinary youth will attempt suicide reduces by over 50% when at least one parent affirms the child's gender identity. Native/Indigenous youth in particular have the highest rates of suicide attempts. Furthermore, LGBTQ+ Native/Indigenous (Two-Spirit) youth have the highest rates of being physically threatened or harmed due to their sexual orientation (47%) or gender identity (49%), and the highest rates of discrimination due to their sexual orientation (76%) or gender identity (78%).

In recognition of the clear connection between LGBTQ+ affirmations by biological parents and a child's mental health, this bill seeks to include in its standards for assessing potential resource families, a requirement that the potential resource family demonstrate the capacity and willingness to care for a child, regardless of the child's sexual orientation or gender identity. While adding this requirement may reduce the number of eligible applicant's willing to care for a LGBTQ+ youth, it also prevents the possibility of placing a child in a home that lacks compassion and understanding of the needs of LGBTQ+ youth, especially in cases where transgender youth may wish to seek gender-affirming care or have a preferred name that is different from their birth name. When LGBTQ+ foster youth are placed in supportive affirming homes, a child's health, permanency, and wellbeing will more likely improve. Overall, this bill aims to strengthen the RFA process by preventing discrimination occurring within the CWS system and providing additional protections for foster youth of all sexual orientations and gender identities.

Policy Considerations: This bill requires a resource family applicant to sign a document acknowledging LGBTQ+ foster youth rights and understanding that sexual orientation, gender identity and expression can evolve over time. The health and safety assessment checklist includes a set of standards that an applicant must meet to become approved as a resource family, and once approved, must continue to meet the standards to maintain approval. One of the standards cites: “Each child and NMD shall be accorded their personal rights as specified in WIC section 16001.9 and the RFA Written Directives.” While the specified code section makes references to provisions of the bill related to meeting the needs of a child, regardless of sexual orientation and gender identity and expression, the aforementioned standard does not make it explicitly clear that the applicant is acknowledging and understanding the specific rights of LGBTQ+ children. The author may wish to consider amending this bill to add language that requires the CDSS to update existing documentation that clarifies the acknowledgement and understanding of the rights of LGBTQ+ children, or create a new document that reflects this standard.

Similarly, the foster parents’ agreement form lists a set of agreed responsibilities that the agency and foster parents are required to meet and then sign as an acknowledgment, and is used when the child is placed with a resource family. The foster parents’ agreement form makes no mention of a foster parent agreeing to acknowledge and understand the rights of LGBTQ+ youth or agreeing to seek out any and all available resources offered by the county or foster family agency to meet the needs of LGBTQ+ youth. The author may wish to consider amending this bill to add language that requires CDSS to update the foster parents’ agreement form to make explicitly clear the acknowledgment and understanding of the rights of LGBTQ+ youth, and the acknowledgement to seek out any and all resources offered by the CWS system.

RELATED AND PRIOR LEGISLATION:

AB 957 (Wilson) of 2023, clarifies that a family court, when determining the best interest of the child in a proceeding to determine custody or visitation for a child, is required to consider a parent’s affirmation of the child’s gender identity, as part of the consideration of the healthy, safety, and welfare of the child. *AB 957 is currently pending a vote on the Senate Floor.*

AB 1522 (Cervantes) of 2023, would have required CDSS to convene a workgroup to create a report with recommendations to prevent housing instability among LGBTQ youth in foster care. *AB 1522 was held on the Assembly Appropriations Committee suspense file.*

AB 2466 (Cervantes) Chapter 967, Statutes of 2022, provided additional protections to resource families by prohibiting, when placing foster children, the placing agency from declining to place a child with a resource family because of a resource family parent’s actual or perceived sexual orientation, gender identity, or gender expression.

AB 175 (Gipson), Chapter 416, Statutes of 2019, expanded the foster youth bill of rights to include rights to be referred to by the youth’s preferred name and pronoun and maintain privacy of the child’s sexual orientation and gender identity and expression.

AB 2119 (Gloria) Chapter 385, Statutes of 2018, clarified the right of foster youth to gender affirming health care and gender affirming mental health care and required CDSS, in consultation with stakeholders, to develop and issue written guidance regarding foster youth access to gender affirming health care and gender affirming mental health by January 1, 2020.

REGISTERED SUPPORT / OPPOSITION:**Support**

Alliance of Child and Family Services (Co-Sponsor)
Equality California (Co-Sponsor)
Aspiranet
Cal Voices
California Alliance of Caregivers
California LGBTQ Health and Human Services Network
Californians for Justice
Children's Law Center of California
City of Sacramento
County of Los Angeles Board of Supervisors
County of Santa Clara
John Burton Advocates for Youth
Los Angeles LGBT Center
Lyon-Martin Health Services
National Association of Social Workers, California Chapter
Sacramento LGBT Community Center
Seneca Family of Agencies
Somos Familia Valle
The Source LGBT+ Center
The Translatin@ Coalition
TransFamily Support Services
TransYouth Liberation

Opposition

California Catholic Conference
California Family Council
California Parents Union
12 private citizens

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