

Consolidated Appropriations Act, 2021

Summary of Division X:
Supporting Foster Youth and Families Through the
Pandemic Act

01/04/2021

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Revision History

Version	Date	Note
v1.0	1/4/21	Original
v2.0	1/5/21	Correction to page 3

On Monday, December 21, Congress passed the COVID-19 Response and Relief Supplemental Appropriations Act¹ as part of an appropriations package that funds the federal government through federal fiscal year (FFY) 2021. The bill was signed into law by the President on December 27, 2020. This summary, prepared by Public Consulting Group (PCG), outlines the various components of Division X of the law which specifically addresses supports for foster youth and families.

DEFINITIONS:

COVID-19 PUBLIC HEALTH EMERGENCY 17 PERIOD.
The term “COVID-19 public health emergency period” means the period beginning on April 1, 2020 and ending with September 30, 2021.

Public health emergency period is extended through FFY2021 (09/30/2021).

SEC. 3. CONTINUED SAFE OPERATION OF CHILD WELFARE PROGRAMS AND SUPPORT FOR OLDER FOSTER YOUTH

Increase in Support for Chafee Programs – Appropriation of additional \$400,000,000 for FY21 for Chafee Program.

- \$50,000,000 of which shall be reserved for Education and Training Voucher.
 - Voucher amounts through the end of fiscal year 2022 is increased to \$12,000.
- Not less than \$500,000 shall be reserved to provide technical assistance to a State implementing or seeking to implement a driving and transportation program for foster youth age 15 or older.
 - The amount per child may not exceed \$4,000 per year.
- Allows states to use more than 30% of funds on room and board payments. Previously, the limit was not to exceed 30% of program funding on room and board expenses.
- Match requirement for States is reduced to 0% (previous requirement was 20%) for the additional appropriation made through this act.
- Additional Chafee funding under this act will not be subject to NYTD reporting and penalties for the period of April 1, 2020 through FFY 2022.
- Usage of additional appropriations – States are not required to report proof of a direct connection to the pandemic if doing so would be administratively burdensome or would otherwise delay or impede the ability of the State to serve foster youth.

\$400M increase in Chafee Program with \$0 match requirement in FFY21.

During FFY20 and FFY2021 a child is eligible for Chafee services and assistance until the age of 27 (through their 26th year). Previously the limit was until the age of 23.

Chafee eligibility age increases to 27 in FFY20 & FFY21. *Note: this time frame is specific to federal fiscal years October 1, 2019 – September 30, 2021 and not tied to the dates of the public health emergency.*

Suspension of requirements during the COVID-19 public health emergency:

- Education and Training Voucher – States may waive that a youth must be enrolled in a postsecondary education or training program or making satisfactory progress toward completion of that program if a youth is unable to do so due to the COVID-19 public health emergency.

Some ETV requirements waived during public health emergency.

¹ <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf>

- A voucher may be used for maintaining training and postsecondary education, including less than full-time matriculation costs or other expenses that are not part of the cost of attendance but would help support youth in remaining enrolled.

Child Welfare agencies are required to ensure youth who are still in care and older than age 18 have meaningful transition plans.

Report to Congress – within 6 months after the end of the expenditure period, the Secretary shall submit to the Congress a report on the extent to which, and the manner in which, the funds to which subsection (a)(3) applies were used to provide technical assistance to State child welfare programs, monitor State performance and foster youth outcomes, and evaluate program effectiveness.

SEC. 4. PREVENTING AGING OUT OF FOSTER CARE DURING THE PANDEMIC

Addressing foster care age restrictions during the pandemic (sec 4a)

A state operating a Title IV-E program may not require a child to leave foster care solely by reason of the child’s age. In addition, a state may not deem a child ineligible for Title IV-E maintenance payments solely due to the age of the child or failure to meet any of the following conditions through October 1, 2021:

States cannot require a child to leave foster care solely by reason of the child’s age.

- Completing secondary education or a program leading to an equivalent credential;
- Enrolled in an institution which provides postsecondary or vocational education;
- Participating in a program or activity designed to promote, or remove barriers to, employment;
- Employed for at least 80 hours per month; or
- Incapable of doing any of the activities described in subclauses (I) through (IV) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

Eligibility rules for Title IV-E for youth over 18 are relaxed “during the pandemic.”

Note: We interpret “during the pandemic” to be the same as the definition of the “COVID-19 Public Health Emergency Period”, or April 1, 2020 – September 30, 2021.

Re-entry of foster youth who age out during the pandemic (sec 4b)

A state operating a Title IV-E program (and without regard to states who have exercised the option to extend foster care) shall;

- Permit any youth who left foster care due to age during the COVID-19 public health emergency to voluntarily re-enter foster care.
- Provide to each youth who was formally discharged from foster care during the COVID-19 public health emergency a notice designed to make the youth aware of the option to return to foster care.
- Facilitate the return of any such youth to foster care.
- Conduct a public awareness campaign about the option to voluntarily re-enter foster care for youth who have not attained 22 years of age, who aged out of foster care in FFY20 or FFY21 and who are otherwise eligible to return to foster care.

Children who left foster care during the public health emergency can voluntarily re-enter.

Protections for youth in foster care (sec 4c)

A state operating a Title IV-E program shall:

- Continue to ensure that the safety, permanence and well-being needs of older foster youth including youth who remain in foster care and youth who age out of foster care during that period but who re-enter foster care are met and
- Work with any youth who remain in foster care after attaining age 18 or older to develop or review and revise a transition plan and assist the youth with identifying adults who can offer meaningful permanent connections.

Authority to use additional funding (sec 4d)

States may use additional Chafee appropriations outlined in section 3 of this act to meet any costs incurred in complying with any parts listed above. The funds must be used after date of the enactment of this bill but before October 1, 2021.

- These Chafee funds may **not** be used for children eligible for Title IV-E maintenance payments, including youth who have attained 18 years of age who are eligible for payments by reason of the temporary waiver of the age requirement highlighted in section 4a.
 - States must make reasonable efforts to ensure eligibility for foster care maintenance payments are determined when the child re-enters under the conditions outlined in this act.
- A child who re-enters foster care during the COVID-19 public health emergency may not be found ineligible for Title IV-E maintenance payments solely due to age requirements or education/employment requirements before Oct 1, 2021.
- All provisions of this section shall have no effect after September 30, 2021.

The additional Chafee funds cannot be used to fund foster care maintenance payments. The law relaxes Title IV-E requirements during the pandemic, and states must make efforts to determine eligibility under the relaxed rules when a youth re-enters foster care.

SEC. 5. FAMILY FIRST PREVENTION SERVICES PROGRAM PANDEMIC FLEXIBILITY.

During the COVID–19 public health emergency period, (April 1, 2020-September 30, 2021) each percentage specified in subparagraphs (A)(i) and (B) of section 474(a)(6) of the Social Security Act 6 is deemed to be 100 percent this includes:

- The total amount expended during the quarter for the provision of prevention services or programs that are provided in accordance with promising, supported, or well-supported practices that meet the applicable criteria. (A)(i)
- The expenditures as are found necessary by the Secretary for the proper and efficient administration of the State plan for the provision of prevention services or programs including expenditures for activities approved by the Secretary that promote the development of necessary processes and procedures to establish and implement the provision of the services and programs for individuals who are eligible for the services and programs and expenditures attributable to data collection and reporting.(B)(i)
- The expenditures with respect to the provision of prevention services and programs specified for training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision and of the members of the staff of State-licensed or State-approved child welfare agencies providing services to children and their parents or kin caregivers, including on how to determine who are individuals eligible for the services or programs, how to identify and provide appropriate services and programs, and how to oversee and evaluate the ongoing appropriateness of the services and programs (B)(ii).

Title IV-E matching requirements for prevention services costs including service costs, administrative costs and training costs are reduced to 0%.

SEC. 6. EMERGENCY FUNDING FOR THE MARYLEE ALLEN PROMOTING SAFE AND STABLE FAMILIES PROGRAM.

An additional \$85,000,000 is appropriated for FFY21 for the Promoting Safe and Stable Families Program (sec 6).

Promoting Safe and Stable Families state match requirement for the additional \$85M is reduced to 0%.

The state matching requirement for the additional appropriation is 0% (sec. 6b).

SEC. 7. COURT IMPROVEMENT PROGRAM.

\$10,000,000 of the amount appropriated in sec 6 above must be set aside for grants under this subsection and used in FFY2021 (sec 7a)

Additional appropriations for court improvement grants targeted to court needs stemming from the pandemic.

Distribution of Funds (sec 7b):

- \$500,000 shall be reserved for tribal court improvement activities.
- With the remaining funds make a grant to each highest State court that is approved to receive a grant under court improvement program.
- Grant amounts should be in the amount of \$85,000 plus the amount that bears the same ratio to the amount reserved that remains after the application the 500K and 85K, as the number of individuals in the State in which the court is located who have not attained 21 years of age bears to the total number of such individuals in all States the highest courts of which were awarded a grant under this subsection (based on the most recent year for which data are available from the Bureau of the Census).
- This funding should be in addition to funding already received by courts.
- Funding should be made available without courts having to submit a new application.
- The Secretary may establish reporting requirements specific to these grants.
- If a court does not accept a grant award, the secretary shall redistribute grant funds to other state highest courts receiving grant awards.

Each highest State court can receive \$85,000 *plus* an additional sum – calculated proportionally from the remaining \$10M after tribal court improvement activities and other highest state courts grants are funded.

Use of Funds (sec 7c):

A court receiving funds under this section shall utilize funds to address the needs stemming from the COVID 19 Pandemic including:

- Technology investments to facilitate the 21 transition to remote hearings for dependency courts when necessary as a direct result of the COVID–19 public health emergency.
- Training for judges, attorneys, and case workers on facilitating and participating in remote hearings that comply with due process and all applicable law, ensure child safety and well-being, and help inform judicial decision-making.
- Programs to help families address aspects of the case plan to avoid delays in legal proceedings that would occur as a direct result of the COVID–19 public health emergency.
- Other purposes to assist courts, court personnel, or related staff related to the COVID–19 10 public health emergency.

SEC. 8. KINSHIP NAVIGATOR PROGRAMS PANDEMIC FLEXIBILITY

Elimination of Matching Fund Requirements (sec 8a)

During the Covid-19 public health emergency the federal match for kinship navigator programs shall be 100%.

Kinship navigator programs do not have to operate with evidence standard during the public health emergency.

Waiver of Evidence Standard (sec 8b)

During the COVID-19 public health emergency the requirement that the secretary determine that a kinship navigator program operate with a promising, supported or well supported practices, shall have no force or effect, except that each state operating such a program make an assurance to the secretary that the program will be, or is in the process of being evaluate for the purpose of building an evidence base.

Other Allowable Use of Funds (sec 8c)

A state may use funds provided to carry out a kinship navigator program for:

- For evaluations, independent systematic review, and related activities;
- To provide short-term support to kinship families for direct services or assistance during the COVID–19 public health emergency period; and
- To ensure that kinship caregivers have the information and resources to allow kinship families to function at their full potential, including —
 - Ensuring that those who are at risk of contracting COVID–19 have access to information and resources for necessities, including 24 food, safety supplies, and testing and treatment for COVID–19;
 - Access to technology and technological supports needed for remote learning or other activities that must be carried out virtually due to the COVID–19 public health emergency;
 - Health care and other assistance, including legal assistance and assistance with making alternative care plans for the children in their care if the caregivers were to become unable to continue caring for the children;
 - Services to kinship families, including kinship families raising children outside of the foster care system;
 - Assistance to allow children to continue safely living with kin

SEC. 9. ADJUSTMENT OF FUNDING CERTAINTY BASELINES FOR FAMILY FIRST TRANSITION ACT FUNDING CERTAINTY GRANTS.

Public Law 116-94 Division N section 602(c) (2) of the Further Consolidated Appropriations Act² (Family First Transition Act) is amended to add subparagraph G which states:

- Hold Harmless for Temporary Increase in FMAP – For each fiscal year specified in subparagraph (B) (90% in FFY20 and 75%in FFY21), the Secretary shall increase the maximum capped allocation for fiscal year 2019 or the final cost neutrality limit for fiscal year 2018 for a State this did not have an amount calculated for FY2019 by the amount equal to the difference between:
 - The amount of the foster care maintenance payments portion of such maximum capped allocation or final cost neutrality limit; and

States eligible for Title IV-E waiver certainty funding will be held harmless for FMAP increase.

² <https://www.congress.gov/116/plaws/publ94/PLAW-116publ94.pdf> (page 589)

- The amount that the foster care maintenance payments portion of such maximum capped allocation or final cost neutrality limit would be if the Federal medical assistance percentage applicable to the State for the fiscal year so specified were used to determine the amount of such portion.
- Applicable Federal Medical Assistance Percentage — the Federal medical assistance percentage applicable to a State for a fiscal year specified is the average of the values of the Federal medical assistance percentage applicable to the State in each quarter of such fiscal year under section 474(a)(1) of the Social Security Act (42 U.S.C. 674(a)(1)) after application of any temporary increase in the Federal medical assistance percentage for the State and quarter under section 6008 of the Families First 19 Coronavirus Response Act and any other Federal legislation enacted during the period that begins 22 on July 1, 2020, and ends on December 31, 2021.³

Funding Certainty Levels are increased to include the temporary FMAP increase made available during the public health emergency.

FFY20 Funding Certainty = 94.65%
FFY21 Funding Certainty = 81.2%

SEC 10 ALLOWING HOME VISITING PROGRAMS TO CONTINUE SERVING FAMILIES SAFELY.

Virtual Home Visits (Sec 10a)

During the COVID 19 Public Health Emergency Period:

- A virtual home visit shall be considered a home visit.

Virtual home visits are allowable during the public health emergency for purposes of the MIECHV program.

Virtual Home Visit Defined (sec 10b)

The term “virtual home visit” means a home visit, as described in an applicable service delivery model, that is conducted solely by the use of electronic information and telecommunications technologies.

- Funding for, and staffing levels of, a program conducted pursuant to such section shall not be reduced on account of reduced enrollment in the program; and
- Funds provided for such a program may be used —
 - To train home visitors in conducting a virtual home visit and in emergency preparedness and response planning for families served, and may include training on how to safely conduct intimate partner violence screenings remotely, training on safety and planning for families served;
 - For the acquisition by families enrolled in the program of such technological means as are needed to conduct and support a virtual home visit; and
 - To provide emergency supplies to families served, regardless of whether the provision of such supplies is within the scope of the approved program, such as diapers, formula, non-perishable food, water, hand soap, and hand sanitizer.

Authority to Delay Deadlines (sec 10c)

The secretary may delay deadlines associated with section 511 of the social security act – Maternal, infant and early childhood home visiting programs. The Secretary may delay the deadline for submission, waive

³ The temporary 6.2% increase in Federal Medical Assistance Percentage (FMAP) began in Q2 of FFY2020 (QE 3 31 20). Therefore, the FFY20 “average of the values of the Federal medical assistance percentage to the state in each quarter of such fiscal year...” is equal to 4.65% or $(0\%+6.2\%+6.2\%+6.2\%)/4$; and equal to 6.2% in FFY21 or $(6.2\%+6.2\%+6.2\%+6.2\%)/4$.

performance measures, or allow for alternative data sources to be used to show improvement in performance in the manner provided in section 511(d)(1) of the Act.

The Secretary may delay the October 1, 2020 deadline for reviewing and updating any needs assessments required under section 511 of the act, but such delay should not delay any payment or allotment to any states for their fiscal year allotment.

SEC. 11. TECHNICAL CORRECTION TO TEMPORARY INCREASE OF MEDICAID FMAP.

Section 6008 of the Families First Coronavirus Response Act (Public Law 116–127) is amended by adding at the end the following: “(d) APPLICATION TO TITLE IV-E PAYMENTS. — If the District of Columbia receives the increase described in subsection (a) in the Federal medical assistance percentage for the District of Columbia with respect to a quarter, the Federal medical assistance percentage for the District of Columbia, as so increased, shall apply to payments made to the District of Columbia under part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.) for that quarter, and the payments under such part shall be deemed to be made on the basis of the Federal medical assistance percentage applied with respect to such District for purposes of title XIX of such Act (42 U.S.C. 1396 8 et seq.) and as increased under subsection (a).”.

FMAP increase includes Washington D.C.