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AB-2948 Adoption Assistance Program: tribal court order. (2023-2024)

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Assembly Bill No. 2948

CHAPTER 175

An act to amend Section 16120 of the Welfare and Institutions Code, relating to foster care.

[Approved by Governor August 19, 2024. Filed with Secretary of State August 19, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2948, Ramos. Adoption Assistance Program: tribal court order.

Existing law establishes the Adoption Assistance Program (AAP), administered by the State Department of Social Services, to benefit children residing in foster homes by providing the stability and security of permanent homes. Existing law requires the department or the county, whichever is responsible for determining the child's AAP eligibility, to assess the needs of the child and the circumstances of the family, with the amount of a cash benefit being determined based on those factors. Existing law requires the department, county adoption agency, or licensed adoption agency to inform the prospective adoptive family regarding the county responsible for providing financial aid to the adoptive family in the determined amount.

Under existing law, a child is eligible for AAP benefits if certain criteria are met, including, among others, that adoptive placement without financial assistance is unlikely because of certain special needs, and that it has been determined that the child cannot or should not be returned to the home of the child's parents as evidenced by any of certain circumstances. Under existing law, those circumstances include, among others, a court order terminating parental rights, a signed relinquishment, or, in the case of a tribal customary adoption, the court has given full faith and credit to a tribal customary adoption order, as specified.

This bill would add, as a qualifying circumstance for purposes of those AAP benefits, a final order of adoption issued by the tribal court of the child's tribe, in the case of an Indian child who was a dependent of the juvenile court immediately prior to the transfer of the Indian child's case. The bill would authorize the department to implement the provisions relating to all of those qualifying circumstances through all-county letters or similar written instructions until regulations are adopted.

Because the bill would expand the qualifying circumstances under the above-described criteria for AAP benefits, thereby creating new duties for counties, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 16120 of the Welfare and Institutions Code is amended to read:

16120. A child is eligible for Adoption Assistance Program benefits if all of the conditions specified in subdivisions (a) to (l), inclusive, are met or if the conditions specified in subdivision (m) are met.

(a) (1) It has been determined that the child cannot or should not be returned to the home of the child's parents as evidenced by any of the following:

(A) A petition for termination of parental rights.

(B) A court order terminating parental rights.

(C) A signed relinquishment.

(D) In the case of a tribal customary adoption, the court has given full faith and credit to a tribal customary adoption order as provided for pursuant to paragraph (2) of subdivision (e) of Section 366.26.

(E) In the case of a nonminor dependent, the court has dismissed dependency or transitional jurisdiction subsequent to the approval of the nonminor dependent adoption petition pursuant to subdivision (f) of Section 366.31.

(F) In the case of an Indian child who was a dependent of the juvenile court immediately prior to the transfer of the Indian child's case pursuant to Section 305.5, a final order of adoption issued by the tribal court of the child's tribe.

(2) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement, interpret, or make specific paragraph (1) by means of all-county letters, written directives, interim licensing standards, or similar written instructions from the department until regulations are adopted. These all-county letters, written directives, interim licensing standards, or similar written instructions shall have the same force and effect as regulations until the adoption of regulations.

(b) The child has at least one of the following characteristics that are barriers to the child's adoption:

(1) 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.

(2) 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 competent to make an assessment and operating within the scope of that licensee's profession. This paragraph shall also apply to children with a developmental disability, as defined in subdivision (a) of Section 4512, including those determined to require out-of-home nonmedical care, as described in Section 11464.

(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. The requirement for this search shall be waived when it would be against the best interest of the child because of the existence of significant emotional ties with prospective adoptive parents while in the care of these persons as a foster child.

(d) The child satisfies any of the following criteria:

(1) The child is under 18 years of age.

(2) The child is under 21 years of age and has a mental or physical handicap that warrants the continuation of assistance.

(3) Effective January 1, 2012, the child is under 19 years of age, effective January 1, 2013, the child is under 20 years of age, and effective January 1, 2014, the child is under 21 years of age and as described in Section 10103.5, and has attained 16 years of age before the adoption assistance agreement became effective, and one or more of the conditions specified in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 11403 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 department or the county responsible for determining the child's Adoption Assistance Program 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, Adoption Assistance Program benefits.

(h) The prospective adoptive parent or any adult living in the prospective adoptive home has completed the criminal background check requirements pursuant to Section 671(a)(20)(A) and (C) of Title 42 of the United States Code.

(i) To be eligible for state funding, the child is the subject of an agency adoption, as defined in Section 8506 of the Family Code, and was any of the following:

- (1) Under the supervision of a county welfare department as the subject of a legal guardianship or juvenile court dependency.
- (2) Relinquished for adoption to a licensed California private or public adoption agency, or another public agency operating a Title IV-E program on behalf of the state, and would have otherwise been at risk of dependency as certified by the responsible public child welfare agency.
- (3) Committed to the care of the department pursuant to Section 8805 or 8918 of the Family Code.
- (4) The child is an Indian child and the subject of an order of adoption based on tribal customary adoption of an Indian child, as described in Section 366.24. Notwithstanding Section 8600.5 of the Family Code, for purposes of this subdivision a tribal customary adoption shall be considered an agency adoption.

(j) To be eligible for federal funding, in the case of a child who is not an applicable child for the federal fiscal year, as defined in subdivision (n), the child satisfies any of the following criteria:

- (1) Prior to the finalization of an agency adoption, as defined in Section 8506 of the Family Code, or an independent adoption, as defined in Section 8524 of the Family Code, is filed, the child has met the requirements to receive federal supplemental security income benefits pursuant to Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code, as determined and documented by the federal Social Security Administration.
- (2) The child was removed from the home of a specified relative and the child would have been AFDC eligible in the home of removal according to Section 606(a) or 607 of Title 42 of the United States Code, as those sections were in effect on July 16, 1996, in the month of the voluntary placement agreement or in the month court proceedings are initiated to remove the child, resulting in a judicial determination that continuation in the home would be contrary to the child's welfare. The child must have been living with the specified relative from whom the child was removed within six months of the month the voluntary placement agreement was signed or the petition to remove was filed.
- (3) The child was voluntarily relinquished to a licensed public or private adoption agency, or another public agency operating a Title IV-E program on behalf of the state, and there is a petition to the court to remove the child from the home within six months of the time the child lived with a specified relative and a subsequent judicial determination that remaining in the home would be contrary to the child's welfare.
- (4) Title IV-E foster care maintenance was paid on behalf of the child's minor parent and covered the cost of the minor parent's child while the child was in the foster family home or child care institution with the minor parent.
- (5) The child is an Indian child and the subject of an order of adoption based on tribal customary adoption of an Indian child, as described in Section 366.24.

(k) To be eligible for federal funding, in the case of a child who is an applicable child for the federal fiscal year, as defined in subdivision (n), the child meets any of the following criteria:

- (1) At the time of initiation of adoptive proceedings, was in the care of a public or licensed private child placement agency or Indian tribal organization pursuant to either of the following:
 - (A) An involuntary removal of the child from the home in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child.
 - (B) A voluntary placement agreement or a voluntary relinquishment.
- (2) The child meets all medical or disability requirements of Title XVI with respect to eligibility for supplemental security income benefits.
- (3) The child was residing in a foster family home or a child care institution with the child's minor parent, and the child's minor parent was in the foster family home or child care institution pursuant to either of the following:
 - (A) An involuntary removal of the child from the home in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child.
 - (B) A voluntary placement agreement or voluntary relinquishment.

(4) The child is an Indian child and the subject of an order of adoption based on tribal customary adoption of an Indian child, as described in Section 366.24.

(5) The nonminor dependent, as described in subdivision (v) of Section 11400, is the subject of an adoption pursuant to subdivision (f) of Section 366.31.

(l) (1) The child is a citizen of the United States or a qualified immigrant. If the child is a qualified immigrant who entered the United States on or after August 22, 1996, and is placed with an unqualified immigrant, the child must meet the five-year residency requirement pursuant to Section 673(a)(2)(B) of Title 42 of the United States Code, unless the child is a member of one of the excepted groups pursuant to Section 1612(b) of Title 8 of the United States Code.

(2) For purposes of this subdivision, a "qualified immigrant" means a person who meets the definition of the term defined in Section 1641 of Title 8 of the United States Code.

(m) A child or nonminor shall be eligible for Adoption Assistance Program benefits if the following conditions are met:

(1) The child or nonminor received Adoption Assistance Program benefits with respect to a prior adoption and the child or nonminor is again available for adoption because the prior adoption was dissolved and the parental rights of the adoptive parents were terminated or because the child's or nonminor's adoptive parents died and the child or nonminor meets the special needs criteria described in subdivisions (a) to (c), inclusive. When a nonminor is receiving Adoption Assistance Program benefits after 18 years of age and the nonminor's adoptive parents die, the juvenile court may resume dependency jurisdiction over the nonminor pursuant to Section 388.1.

(2) To receive federal funding, the citizenship requirements in subdivision (l).

(n) (1) Except as provided in this subdivision, "applicable child" means a child for whom an adoption assistance agreement is entered into under this section during any federal fiscal year described in this subdivision if the child attained the applicable age for that federal fiscal year before the end of that federal fiscal year.

(A) For federal fiscal year 2010, the applicable age is 16 years.

(B) For federal fiscal year 2011, the applicable age is 14 years.

(C) For federal fiscal year 2012, the applicable age is 12 years.

(D) For federal fiscal year 2013, the applicable age is 10 years.

(E) For federal fiscal year 2014, the applicable age is eight years.

(F) For federal fiscal year 2015, the applicable age is six years.

(G) For federal fiscal year 2016, the applicable age is four years.

(H) For federal fiscal year 2017, the applicable age is two years.

(I) For October 1, 2017, to December 31, 2017, any age.

(J) Effective January 1, 2018, to June 30, 2024, the applicable age is two years.

(K) Effective July 1, 2024, and thereafter, any age.

(2) Beginning with the 2010 federal fiscal year, the term "applicable child" shall include a child of any age on the date on which an adoption assistance agreement is entered into on behalf of the child under this section if the child meets both of the following criteria:

(A) The child has been in foster care under the responsibility of the state for at least 60 consecutive months.

(B) The child meets the requirements of subdivision (k).

(3) Beginning with the 2010 federal fiscal year, an applicable child shall include a child of any age on the date that an adoption assistance agreement is entered into on behalf of the child under this section, without regard to whether the child is described in paragraph (2), if the child meets all of the following criteria:

(A) The child is a sibling of a child who is an applicable child for the federal fiscal year, under subdivision (n) or paragraph (2).

(B) The child is to be placed in the same adoption placement as an "applicable child" for the federal fiscal year who is their sibling.

(C) The child meets the requirements of subdivision (k).

SEC. 2. To the extent that this act has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.