

PUBLIC WELFARE (67 PA.C.S.) - ADOPTION OPPORTUNITIES, FAMILY FINDING AND KINSHIP CARE, ESTABLISHING THE KINSHIP CARE PROGRAM AND THE SUBSIDIZED PERMANENT LEGAL CUSTODIANSHIP PROGRAM

Act of Jun. 28, 2019, P.L. 93, No. 14

Cl. 67

Session of 2019

No. 2019-14

HB 856

AN ACT

Amending Title 67 (Public Welfare) of the Pennsylvania Consolidated Statutes, in preliminary provisions, further providing for definitions; in medical assistance hearings and appeals, further providing for definitions; in public welfare generally, providing for adoption opportunities and for family finding and kinship care; establishing the Kinship Care Program and the Subsidized Permanent Legal Custodianship Program; making related repeals; and making editorial changes.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 101 of Title 67 of the Pennsylvania Consolidated Statutes is amended to read:
§ 101. Definitions.

The following words and phrases when used in this [chapter] **title** shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Department." The Department of [Public Welfare] **Human Services** of the Commonwealth.

"Secretary." The Secretary of [the Department of Public Welfare] **Human Services** of [this] **the** Commonwealth.

Section 2. Part II heading of Title 67 is amended to read:

PART II

[PUBLIC WELFARE] **HUMAN SERVICES** GENERALLY

Section 3. The definitions of "bureau" and "program" in section 1101 of Title 67 are amended to read:
§ 1101. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Bureau." The Bureau of Hearings and Appeals of the Department of [Public Welfare] **Human Services**.

* * *

"Program." The medical assistance program established by subarticle (f) of Article IV of the act of June 13, 1967 (P.L.31, No.21), known as the [Public Welfare] **Human Services** Code.

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Section 4. Part II of Title 67 is amended by adding chapters to read:

CHAPTER 21
ADOPTION OPPORTUNITIES

Sec.

2101. Declaration of purpose.

2102. Definitions.

2103. Regulations.

2104. Adoption opportunity payments and reimbursement.

§ 2101. Declaration of purpose.

This chapter shall be interpreted and construed to effect the purpose of encouraging and promoting the placement of children who have disabilities or are hard to place by virtue of age, sibling relationship or ethnicity in adoptive homes.

§ 2102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Adoption opportunity." A subsidy which may include:

- (1) maintenance costs;
- (2) medical, surgical and psychological expenses; and
- (3) other costs incident to the adoption.

"Child." An individual who:

- (1) is under the age of 18 years; or
- (2) is under the age of 21 years and attained 13 years of age before the adoption assistance agreement became effective and is:

- (i) completing secondary education or an equivalent credential;

- (ii) enrolled in an institution that provides postsecondary or vocational education;

- (iii) participating in a program actively designed to promote or remove barriers to employment;

- (iv) employed for at least 80 hours per month; or

- (v) incapable of doing any of the activities described in subparagraph (i), (ii), (iii) or (iv) due to a medical or behavioral health condition that is supported by regularly updated information in the permanency plan of the child.

"County agency." The county children and youth social service agency exercising the power and duties provided for in section 405 of the act of June 24, 1937 (P.L.2017, No.396), known as the County Institution District Law, or its successor, and supervised by the department under Article IX of the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code.

"Eligible child." A child in the legal custody of the county agency where parental rights have been terminated pursuant to the procedure set forth in 23 Pa.C.S. Pt. III (relating to adoption) and who has been in foster placement for a period of not less than six months and shown to be difficult to adopt because of a disability or by virtue of age, sibling relationship or ethnicity. A child in the legal custody of an agency approved by the department shall be an eligible child if the child is certified as eligible by the county agency.

§ 2103. Regulations.

(a) Duty of department.--The department may establish and develop criteria and promulgate necessary regulations for county agencies to implement an adoption opportunity in accordance with the provisions of this chapter.

(b) Content.--The regulations shall include, but are not limited to, the following:

- (1) Criteria for identifying eligible children and adoptive homes.

- (2) Procedures for implementing the adoption opportunity payment.

- (3) Reporting requirements by county agencies.

§ 2104. Adoption opportunity payments and reimbursement.

(a) Amount.--The amount of adoption opportunity payment for maintenance costs to an adoptive family shall not exceed the monthly payment rate for foster family care in the county in which the child resides.

(b) County reimbursement.--The department shall reimburse county agencies for at least 80% of the cost of an adoption opportunity provided by the county agency under this chapter if the county agency complies with the reporting requirements established by the department under section 2103 (relating to regulations).

(c) Limitation.--No public money shall be expended under this chapter on behalf of an eligible child until all available benefits under existing or future private, public, local, State or Federal programs have been exhausted. Notwithstanding any other provision of law, adoptive families subsidized under the provisions of this chapter shall not be liable under the provisions of the act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the Mental Health and Intellectual Disability Act of 1966, or 23 Pa.C.S. Ch. 46 (relating to support of the indigent) in the event that the adopted child needs services or assistance under the provisions of Article IV of the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code, or under the provisions of the Mental Health and Intellectual Disability Act of 1966.

CHAPTER 31

FAMILY FINDING AND KINSHIP CARE

Sec.

3101. Legislative intent.

3102. Definitions.

3103. Family finding required.

3104. Discontinuance of family finding.

3105. Kinship Care Program.

3106. Subsidized Permanent Legal Custodianship Program.

3107. Permanent legal custodianship subsidy and reimbursement.

§ 3101. Legislative intent.

This chapter is intended to ensure that family finding occurs on an ongoing basis for all children entering the child welfare system. This chapter is also intended to promote the use of kinship care when it is necessary to remove a child from the child's home in an effort to:

(1) Identify and build positive connections between the child and the child's relatives and kin.

(2) Support the engagement of relatives and kin in children and youth social service planning and delivery.

(3) Create a network of extended family support to assist in remedying the concerns that led the child to be involved with the county agency.

§ 3102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Accept for service." Decide on the basis of the needs and problems of an individual to admit or receive the individual as a client of the county agency or as required by a court order entered under 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

"Child." An individual who:

(1) is under 18 years of age; or

(2) is under 21 years of age and attained 13 years of age before the subsidized permanent legal custodianship agreement became effective and is:

(i) completing secondary education or an equivalent credential;

(ii) enrolled in an institution that provides postsecondary or vocational education;

(iii) participating in a program actively designed to promote or remove barriers to employment;

- (iv) employed for at least 80 hours per month; or
- (v) incapable of doing any of the activities described in subparagraph (i), (ii), (iii) or (iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan of the child.

"County agency." The county children and youth social service agency exercising the power and duties provided for in section 405 of the act of June 24, 1937 (P.L.2017, No.396), known as the County Institution District Law, or its successor, and supervised by the department under Article IX of the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code.

"Eligible child." A child who meets all of the following:

- (1) Has a court-ordered disposition of placement with a permanent legal custodian pursuant to 42 Pa.C.S. § 6351(a)(2.1) (relating to disposition of dependent child).
- (2) Has lived with an eligible permanent legal custodian for at least six months, which need not be consecutive.
- (3) Is a citizen or an alien lawfully residing in this Commonwealth.

"Eligible permanent legal custodian." A relative or kin who meets all of the following:

- (1) Whose home is approved pursuant to applicable regulations for placement of foster children.
- (2) With whom an eligible child has resided for at least six months, which need not be consecutive.
- (3) Who meets the requirements to be approved as a foster parent under 23 Pa.C.S. § 6344 (relating to employees having contact with children; adoptive and foster parents).

"Family finding." Ongoing diligent efforts between a county agency, or its contracted providers, and relatives and kin to:

- (1) Search for and identify adult relatives and kin and engage them in children and youth social service planning and delivery.
- (2) Gain commitment from relatives and kin to support a child or parent receiving children and youth social services.

"Foster parent." An individual approved by a public or private foster family care agency to provide foster family care services to a child who is temporarily separated from the child's legal family and placed in the legal custody of an agency.

"Kin." An individual 21 years of age or older who is one of the following:

- (1) A godparent of the child as recognized by an organized church.
- (2) A member of the child's tribe, nation or tribal organization.
- (3) An individual with a significant, positive relationship with the child or family.

"Permanent legal custodian." A person to whom legal custody of the child has been given by order of a court pursuant to 42 Pa.C.S. § 6351(a)(2.1).

"Relative." An individual who is:

- (1) Related within the fifth degree of consanguinity or affinity to the parent or stepparent of a child.
- (2) At least 21 years of age.

"Sibling." An individual who has at least one parent in common with another individual, whether by blood, marriage or adoption, regardless of whether or not there is a termination

of parental rights or parental death. The term includes biological, adoptive, stepsiblings and half-siblings.

"Subsidized permanent legal custodianship." A court-ordered disposition of a dependent child pursuant to 42 Pa.C.S. § 6351(a)(2.1) for which the child's permanent legal custodian receives a monetary payment from the county agency pursuant to a subsidized permanent legal custodianship agreement.

"Subsidized permanent legal custodianship agreement." A written agreement signed by the director of the county agency, or a designee, and a permanent legal custodian that sets forth the terms and subsidy payments for a subsidized permanent legal custodianship.

"Successor permanent legal custodian." A relative or kin who meets all of the following:

(1) With whom an eligible child resides for any period of time.

(2) Who has been named as a successor in a permanent legal custodianship agreement executed by an eligible child's previous eligible permanent legal custodian.

(3) Who meets the requirements for employment in child-care services and approval as a foster or adoptive parent under 23 Pa.C.S. § 6344.

§ 3103. Family finding required.

Family finding shall be conducted for a child when the child is accepted for service and at least annually thereafter until the child's involvement with the county agency is terminated or the family finding is discontinued in accordance with section 3104 (relating to discontinuance of family finding).

§ 3104. Discontinuance of family finding.

(a) General rule.--A county agency may discontinue family finding for a child under the following circumstances:

(1) The child has been adjudicated dependent pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters) and a court has made a specific determination that continued family finding no longer serves the best interests of the child or is a threat to the child's safety.

(2) The child is not under the jurisdiction of a court and the county agency has determined that continued family finding is a threat to the child's safety. A determination that continued family finding is a threat to the child's safety must be based on credible information about a specific safety threat, and the county agency shall document the reasons for the county agency's determination.

(3) The child is in a preadoptive placement, and court proceedings to adopt the child have been commenced pursuant to 23 Pa.C.S. Pt. III (relating to adoption).

(b) Resuming family finding.--Notwithstanding the provisions of subsection (a), a county agency shall resume family finding for a child if:

(1) the child is under the jurisdiction of a court and the court determines that resuming family finding is best suited to the safety, protection and physical, mental and moral welfare of the child and does not pose a threat to the child's safety; or

(2) the child is not under the jurisdiction of a court and the county agency determines that resuming family finding serves the best interests of the child and does not pose a threat to the child's safety.

§ 3105. Kinship Care Program.

(a) Establishment of program.--The Kinship Care Program is established in the department.

(b) Relative notification.--Except in situations of family or domestic violence, the county agency shall exercise due diligence to identify and notify all grandparents and other adult relatives to the fifth degree of consanguinity or affinity to the parent or stepparent of a dependent child and each parent who has legal custody of a sibling of a dependent child within 30 days of the child's removal from the child's home if temporary legal and physical custody has been transferred to the county agency. The notice must explain all of the following:

(1) Any options under Federal and State law available to the relative to participate in the care and placement of the child, including any options that would be lost by failing to respond to the notice.

(2) The requirements to become a foster parent, permanent legal custodian or adoptive parent.

(3) The additional supports that are available for children removed from the child's home.

(c) Placement of children.--If a child has been removed from the child's home under a voluntary placement agreement or is in the legal custody of the county agency, the county agency shall give first consideration to placement with relatives or kin. The county agency shall document that an attempt was made to place the child with a relative or kin. If the child is not placed with a relative or kin, the agency shall document the reason why the placement was not possible.

(d) Regulations.--The department is authorized to promulgate regulations necessary to carry out the provisions of this chapter. The regulations shall include, but not be limited to, the following:

(1) Relatives and kin shall receive the same foster care rate as other foster parents if they comply with the regulations governing foster parents.

(2) Foster care payments received by a relative or kin who is a foster parent shall be excluded from consideration when calculating eligibility for public assistance.

§ 3106. Subsidized Permanent Legal Custodianship Program.

(a) Establishment of program.--The Subsidized Permanent Legal Custodianship Program is established in the department.

(b) Implementation.--The department shall establish and develop criteria and is authorized to promulgate necessary regulations for county agencies to implement the Subsidized Permanent Legal Custodianship Program in accordance with the provisions of this chapter. The criteria and regulations shall include, but not be limited to, identification of eligible children and eligible permanent legal custodians, procedures for implementing the program and reporting requirements by county agencies.

§ 3107. Permanent legal custodianship subsidy and reimbursement.

(a) Amount.--The amount of permanent legal custodianship subsidy for maintenance costs to a permanent legal custodian or a successor permanent legal custodian shall not exceed the monthly payment rate for foster family care in the county in which the child resides.

(b) County reimbursement.--The department shall reimburse the county agency for at least 80% of the cost of a permanent legal custodianship subsidy payment provided by a county agency in accordance with the provisions of this chapter, provided that the county agency complies with the requirements established by the department.

Section 5. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the addition of 67 Pa.C.S. Ch. 21.

(2) Subarticle (e) of Article VII of the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code, is repealed.

(3) The General Assembly declares that the repeal under paragraph (4) is necessary to effectuate the addition of 67 Pa.C.S. Ch. 31.

(4) Article XIII of the Human Services Code is repealed. Section 6. The addition of 67 Pa.C.S. Chs. 21 and 31 is a continuation of subarticle (e) of Article VII and Article XIII of the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code. The following apply:

(1) Except as otherwise provided in 67 Pa.C.S. Chs. 21 and 31, all activities initiated under subarticle (e) of Article VII and Article XIII of the Human Services Code shall continue and remain in full force and effect and may be completed under 67 Pa.C.S. Ch. 21 or 31. Orders, regulations and decisions that were made under subarticle (e) of Article VII or Article XIII of the Human Services Code and which are in effect on the effective date of this section shall remain in full force and effect until revoked, vacated or modified under 67 Pa.C.S. Ch. 21 or 31. Contracts, obligations and agreements entered into under subarticle (e) of Article VII or Article XIII of the Human Services Code are not affected or impaired by the repeal of these provisions.

(2) Any difference in language between 67 Pa.C.S. Chs. 21 and 31 and subarticle (e) of Article VII and Article XIII of the Human Services Code, respectively, is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of subarticle (e) of Article VII and Article XIII of the Human Services Code.

(3) Any reference in a statute or a regulation to subarticle (e) of Article VII of the Human Services Code shall be deemed a reference to 67 Pa.C.S. Ch. 21.

(4) Any reference in a statute or a regulation to Article XIII of the Human Services Code shall be deemed a reference to 67 Pa.C.S. Ch. 31.

Section 7. The addition of 67 Pa.C.S. Chs. 21 and 31 shall be retroactive to July 18, 2018.

Section 8. This act shall take effect immediately.

APPROVED--The 28th day of June, A.D. 2019.

TOM WOLF