

COMMONWEALTH OF PENNSYLVANIA
Department of Public Welfare

SPECIAL TRANSMITTAL

SUBJECT: Act 80 of 2012 and Act 91 of 2012

TO: County Commissioners and Executives
County Children and Youth Social Service Agencies
Private Children and Youth Social Service Agencies
County Juvenile Probation Offices

FROM: Cathy A. Utz, Acting *Cathy A. Utz*
Deputy Secretary for Children, Youth and Families

PURPOSE:

The purpose of this Special Transmittal is to provide guidance related to the enactment of Acts 80 and 91 of 2012. Act 80 of 2012 amended the Adoption Opportunities Act and Kinship Care Act to allow for extension of subsidies for adoption and permanent legal custodian cases if certain criteria are met. Act 91 of 2012 amended the Juvenile Act to expand the definition of a child and allow youth to request the resumption of dependency jurisdiction up to age 21 if certain criteria are met.

This Special Transmittal replaces all prior drafts and versions released, including the one signed and dated September 28, 2012 that was included in the Title IV-E state plan. Counties are to use the guidance in this Special Transmittal to determine eligibility for subsidy extensions of all agreements in effect on or after July 1, 2012 and resumption of dependency jurisdiction.

BACKGROUND:

The Federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351) (Fostering Connections) was enacted with a focus on implementation of strategies to support youth as they transition to adulthood and to improve their self-sufficiency. States were given the option to claim federal Title IV-E funds for youth up to age 21 who remain in federally defined foster care, were adopted or placed with a permanent legal custodian after age 16 if the youth met at least one of the following criteria:

- Completing secondary education or an equivalent credential;
- Enrolled in an institution, which provides post-secondary or vocational education;
- Participating in a program actively designed to promote or remove barriers to employment;
- Employed for at least eighty hours per month; or

- Incapable of doing any of the activities described above due to a medical or behavioral health condition, which is supported by information provided to the County Children and Youth Agency (CCYA).

The Department of Public Welfare (Department) and several CCYAs participated on a workgroup convened by Pennsylvania Partnerships for Children and the Juvenile Law Center to complete programmatic and fiscal impact analyses to determine whether a recommendation to the Pennsylvania General Assembly should be made to enact statutory provisions to pursue these options.

Pennsylvania specific data showed that in 2010, nearly 28,000 children were served in the Pennsylvania foster care system and close to half of these children were age 13 or older. Additionally, there were more than 2,300 children adopted from the foster care system in 2010, but only 9% were age 13 or older. Approximately 900 children left federally defined foster care settings or placement for permanent legal custodianship in that same year and only 38% were age 13 or older. Data, research and local practice has shown that it is more challenging to achieve permanency for youth over the age of 13; they are often placed in expensive residential programs and are more likely to re-enter placement within 12 months of being returned to their families.

As a result of these analyses, state statutes were amended; specifically, Pennsylvania expanded the eligibility requirements in its current statute to include federally recognized work activities as outlined in Fostering Connections. As a result, Act 148 payments can be extended for dependent youth up to age 21 who remain in placement or resume court dependency jurisdiction between age 18 and 21, and for youth who have adoption or permanent legal custodianship agreements effective when the youth was at least 13 years of age and meeting one the following criteria:

- Completing secondary education or an equivalent credential;
- Enrolled in an institution, which provides post-secondary or vocational education;
- Participating in a program actively designed to promote or remove barriers to employment;
- Employed for at least eighty hours per month; or
- Incapable of doing any of the activities described above due to a medical or behavioral health condition, which is supported by information provided to the CCYA.

Fostering Connections allows for the use of Title IV-E funds for dependent youth up age 21 who remain in placement or resume court dependency jurisdiction between age 18 and 21, and for youth who have adoption of permanent legal custodianship agreements effective when the youth was at least 16 years of age and meeting one the above criteria.

DISCUSSION:

The efforts of the workgroup led to the enactment of Act 80 of 2012 and Act 91 of 2012. Each Act is discussed individually within this transmittal. Further guidance and tools, including any necessary revisions to Office of Children, Youth and Families (OCYF)

bulletins and procedures, will be released as needed. Please keep in mind that the implementation of these policies should be applied in connection to the service plans of a child.

Act 80 of 2012: Extension of Subsidy

House Bill 1261, Printer's Number 3884, was signed by Governor Tom Corbett on June 30, 2012 with an effective date of July 1, 2012 and is known as Act 80 of 2012.

Act 80 codifies the Department's Subsidized Permanent Legal Custodianship (SPLC) Program at §1303.1 and §1303.2 of the Public Welfare Code and clearly identifies eligibility requirements, both for the child/youth and permanent legal custodian. Act 80 also amends the Public Welfare Code at §772 of the Adoption Opportunities Act and at §1302 of the Kinship Care Act, to expand the definition of child up to age 21. This legislation extends adoption subsidies and subsidized permanent legal custodianship arrangements for a youth between the ages of 18 and 21 as long as they are:

- At least 13 years of age when the adoption assistance agreement or subsidized permanent legal custodianship agreement became effective; and
- Meeting at least one of the following:
 - Completing secondary education or an equivalent credential;
 - Enrolled in an institution, which provides post-secondary or vocational education;
 - Participating in a program actively designed to promote or remove barriers to employment;
 - Employed for at least eighty hours per month; or
 - Incapable of doing any of the activities described above due to a medical or behavioral health condition, which is supported by information provided to the CCYA.

The Kinship Care Act was amended to define kin as an individual 21 or older who is a godparent of the child as recognized by an organized church; a member of the child's tribe, nation or tribal organization; or an individual with a significant positive relationship with the child or family. The definition of relative was also expanded to the fifth degree of consanguinity or affinity (i.e. blood relationship; a close connection). In addition, Act 80 codified in law the Fostering Connections requirement for relative notification in the kinship care program at §1303(a.1), specifically all grandparents and other adult relatives to the fifth degree of consanguinity or affinity to the parent or step parent of a dependent child. County agencies are required to exercise due diligence to notify relatives, within 30 days, of their rights with regard to a child when a child is removed from the home and legal and physical custody has been transferred to the county agency.

The extension of subsidies permitted through the enactment of Act 80 is for those adoptions or permanent legal custodianship subsidy agreements involving youth 13 years of age or older that were in effect on or after July 1, 2012. Please review the table below for assistance in determining eligibility for state or federally supported subsidy extensions.

Extension of Subsidy

Age at the time of Agreement	Eligibility Determination for PLC/Adoption Subsidy	Eligible for Extension 18 - 21	Fulfillment of Extension Criteria	Extended PLC/Adoption Subsidy
0-12 years old	Title IV-E	No	N/A	N/A
0-12 years old	Act 148	No	N/A	N/A
13-15 years old	Title IV-E	Yes	Yes	Title IV-E ineligible (was not 16 at time agreement was executed); Act 148 eligible
13-15 years old	Title IV-E	Yes	No	Non-reimbursable (county funds)
13-15 years old	Act 148	Yes	Yes	Title IV-E ineligible (was not 16 at time agreement was executed); Act 148 eligible
13-15 years old	Act 148	Yes	No	Non-reimbursable (county funds)
16-20 years old	Title IV-E	Yes	Yes	Title IV-E eligible
16-20 years old	Title IV-E	Yes	No	Non-reimbursable (county funds)
16-20 years old	Act 148	Yes	Yes	Act 148 Eligible
16-20 years old	Act 148	Yes	No	Non-reimbursable (county funds)

****Note:** Adoption and Permanent Legal Custodian subsidy agreements for eligible children under the age of 18 who are supported, or were supported, with all county funds can only be extended from age 18 to 21 with all county funds. See the attached Flow Chart for additional clarity of this table.

Act 91 of 2012: Maintenance and Resumption of Dependency Jurisdiction

House Bill 75, Printer's Number 3827 was signed by Governor Tom Corbett on July 5, 2012 with an immediate effective date (July 5, 2012) and is known as Act 91 of 2012. Act 91 amends §6302 (relating to definitions) and §6351 (relating to disposition of dependent child) of the Juvenile Act (42 Pa.C.S. §6301 et seq.) to allow those youth who have dependency jurisdiction terminated by the Court to request the resumption of dependency jurisdiction up until the age of 21 if certain criteria are met. Youth can request resumption of dependency jurisdiction if the jurisdiction was terminated within 90 days prior to turning 18, or on or after their 18th birthday. Resumption youth are eligible for in-home services and/or placement services. With the passage of Act 91, trial discharge is no longer a necessary practice for these youth, unless it is appropriate for the case, because they now have a means by which to have dependency jurisdiction resumed.

The Juvenile Act's definition of a child was amended at §6302 to be consistent with Act 80 of 2012:

"Child." An individual who:

- (1) is under the age of 18 years;
- (2) is under the age of 21 years who committed an act of delinquency before reaching the age of 18 years; or
- (3) is under the age of 21 years and was adjudicated dependent before reaching the age of 18 years, who has requested the court to retain jurisdiction and who remains under the jurisdiction of the court as a dependent child because the court has determined that the child is:
 - (i) completing secondary education or an equivalent credential;
 - (ii) enrolled in an institution, which 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.

There are several ways in which the county can maintain or obtain care and responsibility of a dependent youth age 18 or older in accordance with Act 91:

- Written request prior to age 18 – The youth must request to remain dependent and receive in-home services or be in placement before reaching age 18 or before court jurisdiction ends the agency's responsibility;
- Voluntary Placement Agreement (VPA) - Youth age 18 or older who want to return to placement can sign a VPA. The VPA must be followed with a court order continuing care within 31 days of the effective date of the VPA; or

- Court order – Youth age 18 or older can request the court to resume dependency jurisdiction in order to receive in-home services and/or enter or re-enter placement.

Section 6351 now prescribes that if the court resumes dependency jurisdiction of the youth, permanency hearings must continue to be held at a minimum of every six months until the youth reaches 21 years of age or until court jurisdiction is terminated, whichever comes first. The court is required to determine whether the youth continues to meet the definition of child at §6302, that the youth has requested that the court continue dependency jurisdiction and that a transition plan has been developed in conjunction with the youth.

Youth under dependency jurisdiction who are under the age of 21 have the continued ability to request to remain dependent and receive in-home services or remain dependent and in placement, as long as the youth continues to meet the definition of child. If the youth requests to remain dependent and in placement, new CY60 and CY61 fiscal forms are not a requirement unless there is a change in placement. Act 148 and county funds are available to support youth who remain under, or resume, dependency jurisdiction and receive in-home services. Traditional federal Title IV-E maintenance funds are not available for in-home services.

Please review the tables below for assistance in determining eligibility for state or federally supported extended placement.

Maintenance (Extension) of Placement

Age at the time Youth Requests Placement Continuation	Eligibility Determination	Meets Definition of Child and Fulfills Extension Criteria	Extended Placement Maintenance Payment
Prior to or after 18	Title IV-E	Yes	Title IV-E eligible
Prior to or after 18	Title IV-E	No	Non-reimbursable (county funds)
Prior to or after 18	Act 148	Yes	Act 148 eligible
Prior to or after 18	Act 148	No	Non-reimbursable (county funds)

****Note:** Eligible children/youth supported with all county funds in a continuous placement episode can only be extended for 18 – 21 year olds with all county funds.

Resumption of Dependency Jurisdiction with Placement

Age at the time Youth Requests Entry or Return to Placement	New Eligibility Determination	Dependency Terminated 90 days prior to age 18, on or after age 18	Meets Definition of Child	Placement Maintenance Payment
On or after 18	Title IV-E	Yes	Yes	Title IV-E eligible
On or after 18	Title IV-E	Yes	No	Non-reimbursable (county funds)
On or after 18	Act 148	Yes	Yes	Act 148 eligible
On or after 18	Act 148	Yes	No	Non-reimbursable (county funds)

****Note:** Youth who resume dependency jurisdiction and are placed under agency care and responsibility are in a new placement episode which requires the completion of new CY60 and CY61 fiscal forms.

POLICY AND PROCEDURES:

The county has the obligation to go back to July 1, 2012, and review its entire universe of cases to determine how many youth were/are eligible to receive adoption and SPLC subsidy extensions, placement extensions, and/or to resume dependency jurisdiction. The county must notify, in writing, all youth/families of their eligibility and offer to extend subsidy agreements. The county must also notify age appropriate youth of the ability to extend dependency jurisdiction and receive in-home services, placement or request the court to resume dependency jurisdiction. The county must make a concerted effort to reach all of those youth/families that had dependency jurisdiction, placement or subsidy agreements terminated due to the youth reaching the age of 18 since the enactment of Acts 80 and 91 to the present day. All appropriate retroactive subsidies and placement maintenance payments must be made to youth/families. For all currently active cases (dependency, placement and subsidy agreements), the county should begin educating the youth/families regarding eligibility for the extension of services and update all documents and agreements accordingly. This includes updating county grievance policies and procedures for children and youth in placement to give notice to older youth of their ability to request child welfare services, up to and including a return to placement. The youth is only eligible for extension or resumption of dependency jurisdiction if dependency jurisdiction was terminated by the Court within 90 days prior to the youth turning 18 or on or after the youth's 18th birthday; they request resumption of dependency jurisdiction; and they meet the definition of child. The model grievance and appeal form issued with OCYF Bulletin 3130-12-02, 3700-12-01, 3680-12-01 and 3800-12-01

entitled "Children in Foster Care Act (Act 119 of 2010)" has been revised to include appropriate language and is attached for review and/or use.

The county has the obligation to verify or obtain assurances that all criteria for extension of dependency jurisdiction, permanent legal custodianship and adoption subsidies for youth 18 years of age to 21 have been met, and continue to be met every six months at a minimum.

- For youth age 18 or older who remain dependent or resume dependency jurisdiction, information must be presented to the court at each permanency hearing as the court is required to determine whether the youth continues to meet the definition of child.
- For extended permanent legal custodianship and adoption subsidies, which are closed cases, information must be presented directly to the county agency to determine whether the youth continues to meet the definition of child.

The youth, adoptive parents and permanent legal custodians are required to submit reasonable documentation to the county to substantiate that the extension criteria is being fulfilled. This documentation may include, but is not limited to the following:

- pay stubs;
- report cards;
- work schedules;
- time sheets/cards;
- proof of enrollment;
- completed applications w/ start dates;
- diagnosis by a trained/qualified medical or behavioral health professional; or
- letter/certification from employers, programs, doctors or schools.

It is also the responsibility of the youth, adoptive parents and permanent legal custodians to notify the county and if applicable, the court, at any time when circumstances make the youth ineligible for continued dependency jurisdiction and in-home services, placement and subsidies.

- For youth age 18 or older who remain dependent or resume dependency jurisdiction who are capable but unwilling to work towards meeting the definition of a child, the county should petition the court to terminate dependency prior to the scheduled permanency review hearing, if necessary. The county may not discontinue payments or services until the court determines that the dependent youth is no longer meeting the definition of a child and terminates dependency.
- For extended permanent legal custodianship and adoption subsidies that cease meeting any of the criteria under the expanded definition of child, the county can request reimbursement for the extended permanent legal custodianship and adoption subsidy payments through the end of the month that the county became aware of the youth no longer meeting the definition of a child.

The Administration for Children and Families (ACF) has communicated to states that the options created by Fostering Connections are to be flexible (within reason) for youth age

18 through 21 to ensure that there are ample supports available to this population. This is an opportunity to formulate a tailored plan of services and supports that are designed to facilitate a youth's successful transition to adulthood. Agencies and youth are encouraged to recognize the difference between traditional foster care (younger children removed from their home) and older youth who remain under dependency jurisdiction or resume dependency jurisdiction after age 18. If an older youth does not meet any one of the criteria due to no fault of their own or unusual circumstances, but wishes to remain dependent and receiving in-home services or dependent and in placement, the county can continue to claim for reimbursement provided there is an agreement between the agency and youth to meet another criteria or work toward another criteria. For example, the county must consider an otherwise enrolled youth who is on a semester or summer break to be enrolled in school for the purposes of this provision. Additionally, if a youth has their hours reduced at their place of employment causing ineligibility, the agency should work with the youth to help remedy the situation prior to motioning the court to determine the youth ineligible for the extension.

When a youth age 18 or older clearly does not meet any of the extension criteria as determined by the court and there is termination of dependency, but the youth continues to receive in-home services or remains in placement, the county will be responsible for all costs incurred on behalf of the youth.

The county is also encouraged to utilize federal and state resources available for extended dependency jurisdiction in conjunction with current programs that may be available to youth, such as Independent Living (IL) services, which help current and former foster care youth, ages 16 to 21, transition to adulthood; the Chafee Education and Training Grant Program (ETG), which provides financial grants to students previously in placement to offset higher education costs; and the Statewide Adoption and Permanency Network (SWAN), which provides permanency services to youth currently or previously in the legal custody of a children and youth agency and in placement. The county is also encouraged to use Independent Living Room and Board funds (for eligible youth) or the Special Grant - Housing Program for youth who may be awaiting resumption of dependency jurisdiction or for youth in placement transitioning to independence when housing is an issue. These programs can be coordinated for a youth as long as they are clearly addressing different services and costs.

The following sections provide more detailed policies and procedures around various subject matters:

FOSTER CARE AND PLACEMENT MAINTENANCE PAYMENTS

As required by Fostering connections, foster care maintenance payments must be paid through the provider (i.e., the foster parent, child placing agency, child care institution or the supervised setting), unless the youth is age 18 or older and residing in a supervised independent living setting. For a youth age 18 or older and living independently in a supervised setting, there may be a situation in which no actual provider is involved. In those situations the title IV-E agency may (but is not required to) pay all or part of the foster care maintenance payment directly to the youth. The maintenance payment to the

non-minor youth 18 years of age or older should not exceed the current foster care maintenance payment and should be determined by the county based on the child's individualized needs. This guidance also applies to youth in placement reimbursable by state funds.

COURT

If a youth has a medical or behavioral health condition that prevents them from meeting any of the criteria, they may remain dependent and receive in-home services, remain in placement or request the court resume dependency jurisdiction up to age 21.

Documentation of the condition must be included in the record, such as in the Family Service Plan (FSP), Child Permanency Plan (CPP) or Transition Plans, and updated at least at each permanency review hearing. In addition, the court order requirements of contrary to the welfare/best interests (CTW/BI) and reasonable efforts (RE) may reflect the circumstances that are unique to a youth age 18 or older returning to dependency jurisdiction with in-home services and/or placement. For example, a court order may state that it is in the best interests of the youth to enter placement and that the county made reasonable efforts to meet the youth's needs and to prevent removal from the youth's caregivers prior to a placement. Furthermore, the requirement of reasonable efforts to finalize the FSP/CPP is to be met every six months. Judicial determinations are acceptable for RE to finalize an FSP/CPP that addresses the agency's efforts to prepare the youth for independence. Case plans, FSP's, CPP's, and permanency hearings are not required for extended adoption subsidy and subsidized permanent legal custodianship cases which are considered closed.

MEDICAID

Youth who are eligible for Title IV-E adoption assistance and subsidized legal custodianship with agreements in place, as well as those eligible for Title IV-E foster care maintenance payments, are categorically eligible for Medicaid. Youth who are eligible for state adoption assistance agreements, subsidized legal custodianship agreements, or state placement maintenance payments, have to be determined eligible by the county assistance office (CAO) for Medical Assistance (MA). In the early implementation of Act 91, some counties experienced challenges in establishing Medicaid/MA for youth over age 18 that resumed dependency jurisdiction and entered or re-entered placement. It was determined that DPW's client information system (CIS) was not configured to recognize Title IV-E related Medicaid eligibility for youth age 18 or older. A system enhancement has been made to increase the age cap (from 18 to under 21) in CIS for all child welfare related Medicaid/MA programs (placement, adoption, SPLC). Older youth eligible for benefits under the child welfare related Medicaid/MA programs are excluded from copayments. With the passage of the Affordable Care Act, youth who were in Pennsylvania's or another state's foster care system and were enrolled in Medical Assistance at any time on or after their 18th birthday were eligible beginning January 1, 2014 for Medical Assistance coverage until age 26. Please contact OCYF at ra-ocyf@pa.gov should you encounter any difficulty in establishing Medicaid/MA benefits or issues with copayments for youth over age 18 covered under the provisions of Act 80 or Act 91.

TITLE IV-E DETERMINATIONS

For a youth who resumes dependency jurisdiction and enters or re-enters federally defined foster care after attaining age 18, the county must consider this a new placement episode and complete new CY60 and CY61 fiscal forms. The Title IV-E Aid to Families with Dependent Children (AFDC) eligibility is based on the youth without regard to the parent, legal guardians or others in the home from which the youth was removed. The removal home is considered to be the youth, as a family of one. With regard to removal home and specified relative, the youth is considered to be removed from themselves. In the instance of a non-minor dependent mother and infant, the current policy is still applicable. When a county assumes care and responsibility of the non-minor dependent mother only and places her in federally defined foster care, the foster care maintenance payments for the mother would cover the costs for her child when placed with the non-minor dependent mother in the same setting. The removal home is considered to be the non-minor dependent mother and infant, as a family of two.

INTERSTATE COMPACT PLACEMENTS

The Interstate Compact on the Placement of Children (ICPC) does not specify an age restriction at the time of placement and uses a broad definition of "child". This means that states are not required to utilize the compact when placing a youth 18 or older outside of their home state, though this process can be requested as a courtesy in these cases. Due to the unique issues (travel time and cost for supervision, as well as potential jurisdictional issues) that servicing a youth 18 or older in another state can present, the Department is requesting that the interstate process be used when any youth age 18 or older is being placed into or out of Pennsylvania to assure that the youth is receiving timely and appropriate supervision and services while preventing jurisdictional conflicts. If a county gets a direct request from another state to provide supervision or services to a youth age 18 or older, the county should direct the sending state to make their request to the sending state's interstate office. The county should also notify the Pennsylvania Interstate Office of the request.

DOMESTIC RELATIONS

Parents may be assessed for child support for youth over age 18 who remain dependent and in placement, enter placement, re-enter placement or remain in a subsidized permanent legal custodianship arrangement if the youth is still in high school or if a physical or emotional challenge exists. Whether or not a county will receive child support for a youth over the age of 18 should not be a determining factor in allowing a youth to enter placement or receive a permanent legal custodianship subsidy extension. Child support should not be assessed against the youth themselves.

SWAN SERVICES

Youth aged 18 – 21 are eligible for SWAN services provided they are in the custody of the county children and youth agency and in placement. Since 2003, SWAN Post-permanency Services have been available to adoptive families (whether or not they adopted a child from foster care) and to families who provided permanency to children from the PA child welfare system through PLC or Formal Kinship Care. In the past, eligibility for SWAN Post-Permanency Services ended when the child turned 18 years of

age. SWAN Post-permanency Services are now available to families who have youth aged 18 -21 provided the family became a permanent resource to the child via adoption, PLC or Formal Kinship Care when the youth was aged 13 or older.

AFCARS

Please refer to the AFCARS attachment for thorough guidance in relation to the reporting of older youth.

Please refer all questions and comments to the resource account:
ra-ocyfitleiveqa@pa.gov

Examples and Attachments:

Model Subsidy Agreements

Written Request to Remain in Care

Resumption of Jurisdiction Worksheet and Brochure

Voluntary Placement Agreement

Court Orders

Flow Chart

Model Grievance and Appeal Form- Revised to incorporate Act 91 of 2012

AFCARS Guidance

Acts 80 and 91 Questions and Answers

Acts 80 and 91 Scenarios

Forms – CY60, 61, 61A, 61B, 61C, 842